

No. 3986

1342

United States

1342

Circuit Court of Appeals

For the Ninth Circuit.

FRANK KELLY,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Territory of Alaska, Third Division.

FILED

JUN 11 1923

F. D. MORGAN,
CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court for the Territory of Alaska,
Third Division.

No. 836—CRIMINAL.

UNITED STATES OF AMERICA

vs.

FRANK KELLY,

Defendant.

Praeceptum for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please prepare, authenticate and certify for filing in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, upon the writ of error heretofore issued in the above-entitled cause, the following papers, pleadings and records on file in said case, to wit:

1. This praecipe.
2. Bill of exceptions.
3. Order settling and certifying bill of exceptions.
4. Minute order continuing cause over the term.
5. Assignment of errors.
6. Petition for writ of error.
7. Order allowing writ of error.
8. Appearance bond upon writ of error (approved).
9. Cost bond upon writ of error (approved).
10. Writ of error.
11. Citation on writ of error (original).
12. Citation on writ of error (served copy).

Dated at Valdez, Alaska, this 23d day of January, 1923.

AARON E. RUCKER,
Attorney for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 3, 1923. W. N. Cuddy, Clerk. [1*]

Names and Addresses of Attorneys of Record.

SHERMAN DUGGAN, United States Attorney, and His Assistants, H. G. McCAIN, of Valdez, Alaska, and JULIEN A. HURLEY, of Anchorage, Alaska,

Attorneys for Plaintiff and Defendant in Error.

J. C. MURPHY and JOHN F. COFFEY, of Anchorage, Alaska, L. V. RAY and LEOPOLD DAVID, of Seward and Anchorage, Alaska, AARON E. RUCKER, of Seward, Alaska,

Attorneys for Defendant and Plaintiff in Error. [2]

*Page-number appearing at foot of page of original certified Transcript of Record.

In the District Court for the Territory of Alaska,
Third Division.

No. 836—CRIMINAL.

UNITED STATES OF AMERICA

vs.

FRANK KELLY,

Defendant.

Bill of Exceptions.

Comes now the above-named defendant and being about to prosecute to the United States Circuit Court of Appeals for the Ninth Circuit a writ of error upon the judgment made and entered by the above-named District Court in the above-entitled cause on the 3d day of March, 1922, prays an order of the said District Court, or of the Honorable E. E. Ritchie, Judge thereof, who presided at the trial of said cause and who made and rendered said judgment aforesaid, that this bill of exceptions, containing the following named papers, pleadings, proceedings and exceptions in said cause, be filed, settled and certified to as said defendant's bill of exceptions upon said writ of error, to wit:

1. Indictment.
2. Transcript of testimony.
3. Instructions of the Court to the jury.
4. Requested instructions, refused, and exceptions thereto.
5. Verdict.

6. Motion in arrest of judgment.
7. Motion for new trial and affidavits in support thereof.
8. Counter-affidavits upon motion for new trial.
9. Minute order denying motion in arrest of judgment and motion for new trial and exceptions thereto.
10. Judgment and sentence.
11. Statement of Court *re* judgment and sentence.
12. Motion to vacate judgment and affidavits in support thereof. [3]
13. Counter-affidavit upon motion to vacate judgment.
14. Minute order denying motion to vacate judgment.
15. Stipulation *re* certain original exhibits.
16. Order *re* certain original exhibits.

True, full and correct copies of all of which said papers, pleadings, proceedings and exceptions are hereto attached and are by reference herein inserted in this bill of exceptions.

The defendant, Frank Kelly, prays the judgment and sentence made and pronounced on March 3d, 1922, may be reversed and vacated.

Dated at Seward, Alaska, this 23d day of Jan., 1923.

MURPHY & COFFEY,
RAY & DAVID,
AARON E. RUCKER,
Attorneys for Defendant.

Service of proposed bill of exceptions by copy thereof admitted this 23d day of January, 1923.

SHERMAN DUGGAN,
United States Attorney.

Filed in the District Court, Territory of Alaska, Third Division. Jan. 23, 1923. W. N. Cuddy, Clerk. By _____, Deputy.

Filed in the District Court, Territory of Alaska, Third Division. Feb. 3, 1923. W. N. Cuddy, Clerk. By _____, Deputy. [4]

In the District Court for the Territory of Alaska,
Third Division.

No. 836—CRIMINAL.

UNITED STATES OF AMERICA

vs.

FRANK KELLY and MRS. GRACE KELLY.

Indictment.

Frank Kelly and Mrs. Grace Kelly are accused by the Grand Jury of the Territory of Alaska, Third Division, by this indictment of the crime of causing girls to be transported in interstate commerce for the purposes of prostitution, committed as follows:

The said Frank Kelly and Mrs. Grace Kelly, on the 3d day of August, 1921, at Anchorage, in the Territory of Alaska, Third Division, did unlawfully, willfully, knowingly, and feloniously cause

to be transported in interstate commerce, to wit, from the City of Seattle, in the State of Washington, to the City of Anchorage, in the Territory of Alaska, on a vessel of the Alaska Steamship Company, to wit, the steamship "Alameda," two girls of the names of Mildred Hilkert and Margaret Hilkert, with the intent and purpose on the part of them, the said Frank Kelly and Mrs. Grace Kelly, defendants aforesaid, to induce and entice the said Mildred Hilkert and Margaret Hilkert to become prostitutes, and to give themselves up to debauchery, and to engage in other immoral practices, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United State of America.

SECOND COUNT.

And the said Frank Kelly and Mrs. Grace Kelly are further accused by the Grand Jury of the Territory of Alaska, Third Division, by this indictment, of the crime of aiding and assisting in obtaining [5] transportation for girls in interstate commerce for the purposes of prostitution, committed as follows:

The said Frank Kelly and Mrs. Grace Kelly, on the 3d day of August, 1921, at Anchorage, in the Territory of Alaska, Third Division, did unlawfully, willfully, knowingly, and feloniously aid and assist in obtaining transportation for girls in interstate commerce, to wit, from the City of Seattle, in the State of Washington, to the City of Anchorage, in the Territory of Alaska, on a vessel of the Alaska Steamship Company, to wit, the steamship

“Alameda,” two girls of the names of Mildred Hilkert and Margaret Hilkert, respectively, with the intent and purpose on the part of them, the said Frank Kelly and Mrs. Grace Kelly, defendants aforesaid, to induce and entice the said Mildred Hilkert and Margaret Hilkert to become prostitutes, and to give themselves up to debauchery, and to engage in other immoral practices, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

THIRD COUNT.

And the said Frank Kelly and Mrs. Grace Kelly are further accused by the Grand Jury of the Territory of Alaska, Third Division, by this indictment of the crime of procuring and obtaining tickets for the transportation of girls in interstate commerce for the purposes of prostitution, committed as follows:

The said Frank Kelly and Mrs. Grace Kelly, on the 3d day of August, 1921, at Anchorage, in the Territory of Alaska, Third Division, did unlawfully, willfully, knowingly, and feloniously procure and obtain tickets to be used, and which were used, by girls of the names of Mildred Hilkert and Margaret Hilkert, respectively, in interstate commerce, to wit, from the City of Seattle, in the State of Washington, to the City of [6] Anchorage in the Territory of Alaska, Third Division, on a vessel of the Alaska Steamship Company, to wit, the steamship “Alameda,” in going to the said City of Anchorage, in the Territory and Division afore-

said, with the intent and purpose on the part of them, the said Frank Kelly and Mrs. Grace Kelly, defendants aforesaid, to induce and entice the said Mildred Hilkert and Margaret Hilkert to give themselves up to the practice of prostitution, and to give themselves up to debauchery and other immoral practices, whereby the said Mildred Hilkert and Margaret Hilkert, were transported in interstate commerce from the City of Seattle in the State of Washington to the City of Anchorage, in the Territory of Alaska, Third Division, on a vessel of the Alaska Steamship Company, to wit, the steamship "Alameda," contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

FOURTH COUNT.

And the said Frank Kelly and Mrs. Grace Kelly are further accused by the Grand Jury of the Territory of Alaska, Third Division, by this indictment, of the crime of causing to be procured and obtained tickets for the transportation of girls in interstate commerce for the purposes of prostitution, committed as follows:

The said Frank Kelly and Mrs. Grace Kelly, on the 3d day of August, 1921, at Anchorage, in the Territory of Alaska, Third Division, did unlawfully, willfully, knowingly, and feloniously cause to be procured and obtained tickets to be used, and which were used, by two girls of the names of Mildred Hilkert and Margaret Hilkert, respectively, in interstate commerce, to wit, from the City of Seattle,

in the State of Washington, to the City of [7] Anchorage, in the Territory of Alaska, Third Division, on a vessel of the Alaska Steamship Company, to wit, the steamship "Alameda," in going to the City of Anchorage, in the Territory and Division aforesaid, with the intent and purpose on the part of them, the said Frank Kelly and Mrs. Grace Kelly, defendants aforesaid, to induce and entice the said Mildred Hilkert and Margaret Hilkert to give themselves up to the practice of prostitution, and to give themselves up to debauchery and other immoral practices, whereby the said Mildred Hilkert and Margaret Hilkert were transported in interstate commerce from the City of Seattle in the State of Washington, to the City of Anchorage, in the Territory of Alaska, Third Division, on a vessel of the Alaska Steamship Company, to wit, the steamship "Alameda," contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

FIFTH COUNT.

And the said Frank Kelly and Mrs. Grace Kelly are further accused by the Grand Jury of the Territory of Alaska, Third Division, by this indictment, of the crime of aiding and assisting in procuring and obtaining tickets for the transportation of girls in interstate commerce for the purposes of prostitution, committed as follows:

The said Frank Kelly and Mrs. Grace Kelly, on the 3d day of August, 1921, at Anchorage, in the Territory of Alaska, Third Division, did unlawfully,

willfully, knowingly, and feloniously aid and assist in procuring and obtaining tickets to be used, and which were used, by two girls of the names of Mildred Hilkert and Margaret Hilkert, respectively, in interstate commerce, to wit, from the City of Seattle, in the State of Washington, to the City of Anchorage, in the Territory of Alaska, Third Division, [8] on a vessel of the Alaska Steamship Company, to wit, the steamship "Alameda," in going to the City of Anchorage, in the Territory of Alaska, Third Division, with the intent and purpose on the part of them, the said Frank Kelly and Mrs. Grace Kelly, defendants aforesaid, to induce and entice the said Mildred Hilkert and Margaret Hilkert to give themselves up to the practice of prostitution, and to give themselves up to debauchery and other immoral practices, whereby the said Mildred Hilkert and Margaret Hilkert were transported in interstate commerce from the City of Seattle in the State of Washington, to the City of Anchorage, in the Territory of Alaska, Third Division, on a vessel of the Alaska Steamship Company, to wit, the steamship "Alameda," contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

SIXTH COUNT.

And the said Frank Kelly and Mrs. Grace Kelly are further accused by the Grand Jury of the Territory of Alaska, Third Division, by this indictment, of the crime of persuading, inducing and enticing girls to travel in interstate commerce for

the purposes of prostitution, committed as follows:

The said Frank Kelly and Mrs. Grace Kelly, on the 3d day of August, 1921, at Anchorage, in the Territory of Alaska, Third Division, did unlawfully, willfully, knowingly, and feloniously persuade, induce and entice two girls of the names of Mildred Hilkert and Margaret Hilkert to go from one place to another in interstate commerce, to wit, to go from the City of Seattle, in the State of Washington, to the City of Anchorage, Territory of Alaska, Third Division, with the intent and purpose on the part of them, the said Frank Kelly and Mrs. Grace Kelly, defendants aforesaid, that the said Mildred Hilkert and Margaret Hilkert [9] should engage in the practice of prostitution and debauchery and other immoral practices, and the said Frank Kelly and Mrs. Grace Kelly, defendants aforesaid, unlawfully, willfully, knowingly, and feloniously did thereby cause and aid and assist in causing the said Mildred Hilkert and Margaret Hilkert to go and be carried and transported as passengers on the line and route of a common carrier and carriers in interstate commerce, to wit, from the City of Seattle, in the State of Washington, to the City of Anchorage, in the Territory of Alaska, Third Division, on a vessel of the Alaska Steamship Company, to wit, the steamship "Alameda," contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

SEVENTH COUNT.

And the said Frank Kelly and Mrs. Grace Kelly

are further accused by the Grand Jury of the Territory of Alaska, Third Division, by this indictment, of the crime of causing girls to be persuaded, induced and enticed to travel in interstate commerce for the purposes of prostitution, committed as follows:

The said Frank Kelly and Mrs. Grace Kelly, on the 3d day of August, 1921, at Anchorage, in the Territory of Alaska, Third Division, did unlawfully, willfully, knowingly, and feloniously cause to be persuaded, induced and enticed two girls of the names of Mildred Hilkert and Margaret Hilkert to go from one place to another in interstate commerce, to wit, to go from the City of Seattle, in the State of Washington, to the City of Anchorage, in the Territory of Alaska, Third Division, with the intent and purpose on the part of them, the said Frank Kelly and Mrs. Grace Kelly, defendants aforesaid, that the said Mildred Hilkert and Margaret Hilkert should engage in the practice of prostitution and debauchery [10] and other immoral practices, and the said Frank Kelly and Mrs. Grace Kelly, defendants aforesaid, unlawfully, willfully, knowingly and feloniously did thereby cause and aid and assist in causing the said Mildred Hilkert and Margaret Hilkert to go and be carried and transported as passengers on the line and route of a common carrier and carriers in interstate commerce, to wit, from the City of Seattle, in the State of Washington, to the City of Anchorage in the Territory of Alaska, Third Division, on a vessel of the Alaska

Steamship Company, to wit, the Steamship "Alameda," contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

EIGHTH COUNT.

And the said Frank Kelly and Mrs. Grace Kelly are further accused by the Grand Jury of the Territory of Alaska, Third Division, by this indictment, of the crime of aiding and assisting in persuading, inducing, and enticing girls to travel in interstate commerce for the purposes of prostitution, committed as follows:

The said Frank Kelly and Mrs. Grace Kelly on the 3d day of August, 1921, at Anchorage, in the Territory of Alaska, Third Division, did unlawfully, willfully, knowingly, and feloniously aid and assist in persuading, inducing, and enticing two girls by the names of Mildred Hilkert and Margaret Hilkert to go from one place to another in interstate commerce, to wit, to go from the City of Seattle, in the State of Washington, to the City of Anchorage, in the Territory of Alaska, Third Division, with the intent and purpose on the part of them, the said Frank Kelly and Mrs. Grace Kelly, defendants aforesaid, that the said Mildred Hilkert and Margaret Hilkert should engage in the practice of prostitution and debauchery and other immoral practices and the said Frank Kelly and Mrs. Grace Kelly, defendants aforesaid, [11] unlawfully, willfully, knowingly and feloniously did thereby cause and aid and assist in causing the said Mildred Hilkert and Margaret Hilkert to go

and be carried and transported as passengers on the line and route of a common carrier and carriers in interstate commerce, to wit, from the City of Seattle, in the State of Washington, to the City of Anchorage, in the Territory of Alaska, Third Division, on a vessel of the Alaska Steamship Company, to wit, the steamship "Alameda," contrary to the form and statute in such case made and provided and against the peace and dignity of the United States of America.

Dated at Valdez, in the Territory of Alaska, Third Division, this twenty-fifth day of October, nineteen hundred and twenty-one.

SHERMAN DUGGAN,

United States Attorney.

[Endorsed]: No. —. Criminal. District Court, Territory of Alaska, Third Division. The United States of America vs. Frank Kelly and Mrs. Grace Kelly. Indictment: Violation White Slave Traffic Act. A True Bill. Nels. Jepson, Foreman. Presented to the Court by the Foreman of the Grand Jury in Open Court, in the Presence of the Grand Jury and Filed in the District Court, Territory of Alaska, Third Division. Oct. 26, 1921. W. N. Cuddy, Clerk. Aaron E. Rucker, Deputy.

Witnesses before Grand Jury: Mildred Hilkert, Margaret Hilkert and Peter Cook. [12]

In the District Court for the Territory of Alaska,
Third Division.

No. 836—CRIMINAL.

UNITED STATES OF AMERICA

vs.

FRANK KELLY and MRS. GRACE KELLY,
Defendants.

Transcript of Evidence.

BE IT REMEMBERED, That the above-entitled cause came on duly and regularly to be heard at Anchorage, in said Third Division, Territory of Alaska, on Monday, February 20, 1922, before the Honorable E. E. RITCHIE, Judge of said court, and a Jury.

The Government being represented by Honorable SHERMAN DUGGAN, United States Attorney, and Messrs. JULIEN HURLEY and HARRY G. McCAIN, Assistant United States Attorneys.

The defendants being represented by their counsel and attorneys, Messrs. MURPHY & COFFEY and L. V. RAY.

The jury having been empaneled and sworn, opening statements were made by Mr. Duggan on behalf of the Government and by Mr. Murphy on behalf of the defendants.

WHEREUPON, the following additional proceedings were had and done, to wit: [13]

In the District Court for the Territory of Alaska,
Third Division.

No. 836—CRIMINAL.

UNITED STATES OF AMERICA

vs.

FRANK KELLY and MRS. GRACE KELLY,
Defendants.

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PLAINTIFF'S EXHIBITS:

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[14]

Testimony of Peter A. Cook, for the Government.

PETER A. COOK, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. DUGGAN.

Q. What is your name? A. Peter A. Cook.

Q. Where do you live? A. Anchorage.

Q. What, if any, official position do you hold?

A. Operator in charge of the telegraph office.

Q. As such have you the custody of messages sent and received? A. Yes, sir.

Q. Have you also the custody of receipts for messages delivered? A. Yes, sir.

Q. Have you in your custody a message dated on or about August 1, 1921, signed by Ragtime Kelly, addressed to Mildred Hilkert, Normandie Apartments, Seattle, Washington? A. Yes, sir.

Q. Was that message delivered to you for the purpose of transmission? A. It was; yes.

Q. Was it transmitted? A. It was.

Mr. RAY.—Who delivered the message to you?

(Testimony of Peter A. Cook.)

The WITNESS.—Well, I couldn't swear to that but I think it was Frank Kelly himself brought it in; I am not positive at this time.

Q. Have you that message with you? A. Yes.

Q. Will you produce it?

A. Yes, sir. (Witness produces paper and hands to Mr. Duggan.) [15—2]

Mr. DUGGAN.—We now offer in evidence message dated August 1, 1921, purported to have been signed by Ragtime Kelly, addressed to Mildred Hilkert.

The message is admitted in evidence, without objection, marked Plaintiff's Exhibit "A" and is read to the jury by Mr. Duggan. The exhibit reads as follows:

Government's Exhibit "A."

Anchorage, August 1, 1921.

Mildred Hilkert,

Normandie Apts., Seattle, Wash.

Fred Waller just arrived in Anchorage and spoke to me about you and your sister wanting to come to Anchorage. Let me know at once your lowest salary for you and your sister per week to work for me, you play the piano and sing and sister help you also. Will advance your transportation and you both pay five dollars per week till transportation is paid out. Answer quick—fall and winter engagement.

RAGTIME KELLY.

(Testimony of Peter A. Cook.)

Q. Mr. Cook, was there an answer received to that message?

Mr. RAY.—I want to ask the witness a question—Mr. Cook, do you know to whom that message was delivered?

The WITNESS.—In Seattle?

Mr. RAY.—Yes.

The WITNESS.—No, I do not.

Q. Was there any message came about that time signed Mildred Hilkert, addressed to Ragtime Kelly?

A. There was one I suppose was from her—the name is evidently balled up, but it is evidently an answer to the one sent.

The COURT.—I understand the name is not spelled correctly?

The WITNESS.—No.

Q. Have you that message?

A. Yes, sir. (Witness hands paper to Mr. Dugan.)

Q. This is not the message delivered here?

A. That is the message delivered here.

Q. Is this the message delivered or a copy of it?
[16—3]

A. That is a copy.

Q. Have you the receipts for messages delivered?

A. Yes.

Q. On or about the second day of August, 1921, was there a message delivered to Frank Kelly or Ragtime Kelly?

Mr. RAY.—We object to that as not the best evidence.

(Testimony of Peter A. Cook.)

The COURT.—It may be admitted at this time. Of course if you fail to connect it with the necessary testimony to identify it, the testimony will have to be stricken later. I think you should identify the message a little further in your question but the objection will be overruled.

(Defendants allowed an exception to the ruling.)

A. Yes.

Q. Is this a copy of the message delivered at that time?

A. That is a carbon copy of the message delivered.

Q. Who has the original message?

A. It was delivered to Frank Kelly.

Mr. DUGGAN.—I now offer in evidence copy of an original message from Mildred Hilkert to Ragtime Kelly, Anchorage, dated August 2, 1921.

Mr. RAY.—I should like to ask the witness a few questions.

The COURT.—Very well.

(Questions by Mr. RAY.)

Q. This shows the delivery of the original of this message to Kelly? A. Yes.

Q. You don't say that you delivered the message personally?

A. It happened in this case that I did.

Q. Your receipt would show that fact also?

A. No, it would show that Kelly received it, that is all—it don't show who delivered it.

Q. The message came and was delivered? [17—

4] A. Yes, sir.

(Testimony of Peter A. Cook.)

Q. And that is the record of your office?

A. Yes, sir.

Mr. RAY.—We have no objection to the offer.

The COURT.—This is the carbon copy retained in your office—the original was delivered to Mr. Kelly?

The WITNESS.—Yes, sir.

The message is admitted in evidence, marked Government's Exhibit "B" and read to the jury by Mr. Duggan. The exhibit reads as follows:

Government's Exhibit "B."

Seattle, Wn. Aug. 2, 1921.

Ragtime Kelly,

Anchorage.

Twenty-five per week for self twenty for sister. Can leave as soon as transportation arrives. Answer at once.

MILDRED HILKUT.

Direct Examination by Mr. DUGGAN (Continued).

Q. Will you produce the receipt for the delivery of the message?

A. Yes, sir—it is the last one on the bottom. (Handing paper to Mr. Duggan.)

Q. Calling your attention to the writing on the last line, on the bottom of this sheet—whose name is that? A. That is Kelly.

Q. Is this the receipt for the delivery of the message, the copy of which was just introduced?

A. Yes.

Mr. DUGGAN.—We now offer the writing on the

(Testimony of Peter A. Cook.)

last line from the bottom of this sheet, showing the delivery of the message.

Mr. RAY.—I presume the whole sheet will have to be offered?

The COURT.—Yes.

The sheet is admitted in evidence, marked Government's Exhibit "C," the last line of which reads: [18—5]

Government's Exhibit "C."

Number	Message	Address	Charges	Received by	Time Delvd.
	55	Kelly	3.72	Kelly	8:20 P

Q. Now, Mr. Cook, about that time was there any further message sent by the defendant Frank Kelly or Ragtime Kelly—delivered at your office by Frank Kelly or Ragtime Kelly, addressed to Mildred Hilkert, Seattle, Washington?

A. Yes, sir.

Q. What was done with the message?

A. It was sent.

Q. Have you that message? A. Yes, sir.

Q. Will you produce it?

A. Yes, sir. (Handing paper to Mr. Duggan.)

Mr. DUGGAN.—I offer this in evidence as Exhibit "D," purporting to be a message from Ragtime Kelly to Mildred Hilkert dated August 3, 1921.

Mr. RAY.—I want to ask a few questions.

(Questions by Mr. RAY.)

Q. As I understand, the message concerning

(Testimony of Peter A. Cook.)

which Mr. Duggan is now inquiring was transmitted by you? A. Yes, sir.

Q. Do you know the signature to the message—do you know who signed the message?

A. No, I do not know who signed it.

Q. Who brought the message in?

A. It was either Frank Kelly or Mrs. Kelly, I am not sure which.

Q. It came from one of these defendants?

A. I couldn't swear to that at this time. It was brought into the office, that is all I know, but I couldn't swear as to who brought it in now. [19—6]

Mr. RAY.—We object to the introduction of this message on the ground that it is not shown that the defendants, or either of them, sent this message, brought it in or signed it.

The COURT.—That is true; unless the witness can identify the person who brought it in, it will have to be proven in another way.

Mr. RAY.—I will withdraw the objection.

The message is admitted in evidence, marked Government's Exhibit "D" and read to the jury by Mr. Duggan. The exhibit reads as follows:

Government's Exhibit "D."

Anchorage, Alaska, ———, 192—

Mildred Hilbert,

Normandie Apts., Seattle, Wash.

I am wiring two tickets for next Alameda.

RAGTIME KELLY.

Several days after the third of August, some-

(Testimony of Peter A. Cook.)

where about the 8th or 9th, was there a message filed in your office by P. B. Coe, agent of the Alaska Steamship Company at Anchorage, addressed to Henroid, agent of the same company at Seattle, in regard to transportation for Mildred and Margaret Hilkert?

A. There was one filed on August third.

Q. Have you that message? A. Yes.

Q. Will you produce it?

A. Yes, sir. (Hands paper to Mr. Duggan.)

Q. Who filed that?

A. I think it was Mr. Coe himself but I couldn't swear to that either. He might have sent it in but I think it was Mr. Coe himself that filed it.

Mr. DUGGAN.—We offer this in evidence.

The message is admitted as Government's Exhibit "E" and read to the jury by Mr. Duggan. The exhibit reads as follows: [20—7]

Government's Exhibit "E."

NITE LETTER 40 Pd.

Anchorage, Alaska, Aug. 3, 1921.

G. F. Henrioud,

Alaska Steamship Co.,

Seattle, Wash.

Notify by telephone and furnish Mildred Hilkut and sister Normandy Apartments upper deck tickets if possible otherwise lower deck Seattle to Anchorage on Alameda sailing from Seattle August ninth Stop Value hundred sixty-nine dollars and fifty-six cents. Debit me.

P. B. COE.

(Testimony of Paul Brooks Coe.)

Mr. DUGGAN.—That is all.

Mr. RAY.—We have no cross-examination.

Witness excused. [21—8]

Testimony of Paul Brooks Coe, for the Government.

PAUL BROOKS COE, a witness called and sworn in behalf of the Government, testified as follows:

Direct Examination by Mr. DUGGAN.

Q. State your name.

A. Paul Brooks Coe.

Q. On or about the third day of August, 1921, where were you living? A. At Anchorage.

Q. What, if any, position did you hold at that time?

A. Local agent for the Alaska Steamship Co.

Q. Is the Alaska Steamship Co. the owner of the ship called the "Alameda"?

A. As far as I know they are.

Q. Who operates it?

A. The Alaska Steamship Co.

Q. On or about August 3, 1921, did you deliver a message at the telegraph office of the Alaska Engineering Commission at Anchorage, Alaska, signed by yourself, addressed to G. F. Henrioud, Alaska Steamship Company, Seattle, Washington, regarding transportation? A. I did.

Q. Is that the message? (Handing witness paper.) A. Yes, sir.

Q. How did you happen to send that message?

Mr. RAY.—We object to that.

(Testimony of Paul Brooks Coe.)

Objection overruled; defendants allowed an exception.

A. I was requested to send it.

Q. By whom? A. By Mr. Kelly.

Q. What was the substance of the conversation.

Mr. RAY.—Objected to. [22—9]

Objection overruled; defendants allowed an exception.

A. Well, he came in either that morning or the day before, I forget which, and asked if such a thing was possible, that he could arrange the transportation here,—get the tickets and authorize the agent at Seattle to issue them, and he came in either the next day or later in the afternoon and had it done.

Q: Did he at this time pay any money?

A. Not the first time.

Q. At the time that this message was sent, did he pay any money?

A. Certainly—I collected the money before I sent the message.

Q. What was that money collected for?

A. For the fare, for the tickets.

Q. For whom?

A. For Mildred Hilkert and sister.

Q. Where from?

A. From Seattle, Washington.

Mr. DUGGAN.—That is all.

Mr. RAY.—What did you say the name of the lady was?

A. According to the telegram it was Mildred Kilkut.

Witness excused. [23—10]

Testimony of W. H. Ludin, for the Government.

W. H. LUDIN, a witness called and sworn in behalf of the Government, testified as follows:

Direct Examination by Mr. DUGGAN.

Q. What is your name? A. W. H. Ludin.

Q. Where do you live? A. Seattle.

Q. What, if any, position do you hold in Seattle?

A. City passenger agent for the Alaska Steamship Co.

Q. As such are you the custodian of transportation records in the office? A. Yes, sir.

Q. On or about the third day of August, 1921, did your office receive a telegram from P. B. Coe authorizing you to furnish any tickets?

A. Yes, sir.

Q. Have you the telegram received?

A. Yes, sir.

Q. Will you produce it?

A. Yes, sir. (Witness does so and hands to Mr. Duggan.)

Q. You know that this telegram was received by your office? A. Yes.

Q. How? A. Because I receipted for it myself.

Mr. DUGGAN.—I now offer in evidence telegram identical with Government's Exhibit "E," being the received message.

Mr. RAY.—Are you offering the message or the memoranda on it?

Mr. DUGGAN.—Just the message at this time. The message is admitted without objection,

(Testimony of W. H. Ludin.)

marked Government's Exhibit "F" and is identical with Government's Exhibit "E," which appears on page 8 of this record. [24—11]

Q. Who handled the transaction there?

A. I did.

Q. What did you do on receipt of this message?

A. I immediately called up the Normandie Apartments and talked with one of the girls, and told them—

Mr. RAY.—We object to any conversation between Ludin and the girls in Seattle * * * the notation shows the delivery by the Alaska Steamship Co. of the two tickets.

The COURT.—Yes, the message shows the tickets were delivered, so the fact that the girls got notice is not important.

Q. Did you deliver any tickets? A. I did.

Q. In compliance with this request?

A. Yes, sir.

Q. Whom to?

A. To Mildred Hilkert and Margaret Hilkert.

Q. Have you those tickets? A. Yes, sir.

Q. Will you produce them?

A. Yes, sir. (Witness does so and hands to Mr. Duggan.)

Q. I will ask you this question, Mr. Ludin, when a ticket is issued what routine is gone through?

A. Why I have the passenger sign it and I countersign it.

Q. Do you recognize that signature? (Handing witness ticket.)

(Testimony of W. H. Ludin.)

A. I recognize my own.

Q. Do you recognize the other one?

A. Merely that the girls signed it—I know they signed it.

Q. In your presence? A. Yes, sir.

Q. Whom was that issued to?

A. This was issued to Mildred Hilkert. [25—12]

Q. And this one? (Handing witness the other ticket.) A. That one to Margaret Hilkert.

Q. Were they signed in your presence?

A. Yes, sir.

Mr. DUGGAN.—I offer in evidence the ticket issued to Mildred Hilkert and ask it be marked Government's Exhibit "G."

Mr. RAY.—The defendants object to the introduction of this exhibit for the reason that the indictment charges transportation from Seattle to Anchorage, Alaska, and the ticket is from Seattle to Knik Anchorage and it has not been shown that Knik Anchorage and Anchorage are one and the same; and the further objection that it is unnecessary to encumber this record with the statement of liability as set forth in this ticket when the telegram shows the delivery of the two tickets.

Objection overruled; defendants allowed an exception.

The ticket is admitted in evidence as Government's Exhibit "G," is attached hereto and made a part hereof.

Mr. DUGGAN.—We also offer the ticket issued to Margaret Hilkert.

(Testimony of W. H. Ludin.)

Same objection; same ruling and exception.

The ticket is marked Government's Exhibit "H" and admitted in evidence; is attached hereto and made a part hereof.

Q. Do you know whether or not these girls took passage on the "Alameda"? A. I do.

Q. How do you know?

A. I saw them on the boat.

Q. What was the sailing time of the "Alameda," do you remember?

A. 9 A. M. on August 10th, I believe it was.

Mr. RAY.—Who identified these people to you, Mr. Ludin? A. They identified themselves.

Witness excused. [26—13]

Testimony of William A. Spoon, for the Government.

WILLIAM A. SPOON, a witness called and sworn in behalf of the Government, testified as follows:

Direct Examination by Mr. DUGGAN.

Q. State your name. A. William A. Spoon.

Q. Where do you live?

A. Seattle, Washington.

Q. What, if any, official position do you hold in Seattle? A. Assistant cashier of the cable office.

Q. As such assistant cashier of the cable office are you custodian of the messages received and delivered?

A. I am custodian of the files.

(Testimony of William A. Spoon.)

Q. On or about the first day of August, 1921, was there a message received in your office from Anchorage, Alaska, addressed to Mildred Hilkert, Normandie Apartments, Seattle, Washington, signed by Ragtime Kelly?

A. There was one received August second,—filed at Anchorage, August first.

Q. Have you that message?

A. I have. (Witness produces paper and hands to counsel.)

Q. What is this?

A. That is a water copy of the original message delivered to Mildred Hilkert.

Mr. RAY.—Did you deliver that message?

The WITNESS.—I phoned that to Mildred Hilkert and then she called for it at six o'clock and I delivered it to her personally; it was phoned at 5:15, I believe, P. M.

Mr. DUGGAN.—We now offer this message in evidence.

It is admitted, without objection, and marked Government's Exhibit "I"; is identical with Government's Exhibit "A," which appears on page 3 of this record. [27—14].

Q. Did either Mildred Hilkert or Margaret Hilkert the next day or soon thereafter deliver at your office a message addressed to Ragtime Kelly?

A. Mildred Hilkert filed one at 6:05 the same date to Ragtime Kelly. (Producing paper and handing to counsel.)

Q. That was on the second, was it?

(Testimony of William A. Spoon.)

A. Yes, sir.

Q. She filed that personally? A. Yes, sir.

Mr. DUGGAN.—We offer this message in evidence.

It is admitted, without objection, marked Government's Exhibit "J"; is identical with Government's Exhibit "B," which appears on page 5 of this record.

Q. Thereafter, on or about the third day of August, 1921, was there received at your office a message from Ragtime Kelly, Anchorage, Alaska, addressed to Margaret Hilkert or Mildred Hilkert, Normandie Apartments, Seattle, Washington?

A. I have one received August 3d to Mildred Hilkert, Normandie Apartments, signed Ragtime Kelly. (Producing paper and handing to counsel.)

Q. What is this?

A. A water copy of the original.

Q. What was done with the original?

A. The original was delivered to the Normandie Apartments and signed by Miss Mosson.

Mr. DUGGAN.—We offer this copy in evidence. It is admitted, without objection, marked *Gover it* "K"; and reads as follows:

(Testimony of William A. Spoon.)

Government's Exhibit "K."

Anchorage, Alaska, Aug. 3.

Mildred Hilkert,
Normandie Apartments,
Seattle, Wash.

I am wiring two tickets for *ex* Alameda.

RAGTIME. [28—15]

Q. About the third of August, 1921, did your office receive a message from P. B. Coe, Anchorage, Alaska, addressed to G. F. Henrioud, Alaska Steamship Co., Seattle, Wash.?

A. There was one received on the 4th from Anchorage. (Handing counsel paper.)

Q. What is this?

A. This is a water copy of the original.

Q. What was done with the original?

A. The original was delivered and signed for by W. H. Ludin.

Q. Is that the Ludin who is a witness in this case? A. Yes, sir.

Q. One of the agents in the Seattle office?

A. Yes, sir.

Mr. DUGGAN.—I offer this message in evidence.

It is admitted, without objection, marked Government's Exhibit "L" and is identical with Government's Exhibit "E," which appears on page 8 of this record.

Q. What have you there?

A. I have the delivery sheet of other messages

(Testimony of William A. Spoon.)

that originated in Anchorage and were delivered in Seattle, the receipts for the delivery.

Q. Will you indicate where those receipts are?

A. There is the first one, to Mildred Hilkert from Ragtime Kelly (indicating); there's the second one, from Ragtime Kelly to Mildred Hilkert (indicating), signed for by Miss Mosson, and there's the Henrioud message (indicating).

The three receipt sheets are admitted in evidence, without objection, marked Exhibit "M"; are attached hereto and made a part hereof.

(By Mr. RAY.)

Q. When did you leave Seattle?

A. First day of February, 1922.

Q. And came directly to Anchorage?

A. Yes, sir. [29—16]

**Testimony of Mildred Hilkert Bowles, for the
Government.**

MILDRED HILKERT BOWLES, a witness called and sworn as a witness in behalf of the Government, testified as follows:

Direct Examination by Mr. DUGGAN.

Q. What is your name?

A. Mildred Hilkert Bowles.

Q. On or about during the month of August last what was your name? A. Mildred Hilkert.

Q. You have since been married?

A. Yes, sir

(Testimony of Mildred Hilbert Bowles.)

Q. On or about the first day of August did you receive a telegram from Anchorage? A. I did.

Q. Whom was it from in Anchorage?

A. From Ragtime Kelly.

Q. How did you receive that message?

A. From the United States military cable office.

Q. Where?

A. At the Normandie Apartments, Seattle.

Q. Is that the message? (Handing witness paper.) A. Yes, sir.

Mr. DUGGAN.—We now offer in evidence this message which is an identical copy of Exhibit "A" already in evidence.

The message is admitted as Government's Exhibit "N"; it is identical with Government's Exhibit "A," found on page 3 of this record.

Q. After receiving that message what did you do?

A. I replied to it with a wire stating the terms we would come on.

Q. Did you write the message yourself?

A. I did.

Q. Is that the message? (Hands witness paper.) [30—17] A. Yes.

Q. Is that your handwriting? A. Yes.

Q. Is that your signature? A. Yes, sir.

Q. What did you do with the message?

A. Delivered it at the cable office.

Q. Thereafter, on or about the third day of August, did you receive any further message from Ragtime Kelly at Anchorage?

(Testimony of Mildred Hilkert Bowles.)

A. I received a wire that he would wire tickets through the cable office for us to come on the "Alameda."

Q. Is that the wire? (Handing witness paper.)

A. Yes.

Mr. DUGGAN.—We offer this message in evidence.

It is admitted as Government's Exhibit "O," without objection, and is identical with Government's Exhibit "K," found on page 15 of this record.

Q. Upon receipt of this message what did you do?

A. Packed up our trunks and got ready to catch the boat. We called the steamship office first, called up to see if the tickets had arrived and they said they would look it up and we went out and while we were away, the steamship office called up our home and said the tickets had arrived and we went over and got them.

Q. And then what did you do?

A. Packed up and caught the "Alameda."

Q. Where did you board the "Alameda"?

A. At Seattle.

Q. Where did you come to? A. To Anchorage.

Q. This city? [31—18] A. Yes, sir.

Q. Where did you land?

A. At Anchorage, the dock.

Q. And then where did you go?

A. To the depot.

(Testimony of Mildred Hilkert Bowles.)

Q. Whom did you meet there?

A. Kelly with a car.

Q. This defendant? A. Yes.

Q. Where did you go then?

A. In the car, to his place of business.

Q. What place is that?

A. The pool-hall know as Ragtime Kelly's.

Q. What, if anything, happened when you went there?

A. Well, we got out of the car and we were a little bit surprised at the place—

Mr. RAY.—We object to that. (Objection sustained.)

Q. Tell what happened.

A. We got out of the car and went into the place and met Mrs. Kelly and then we were taken through the pool-room and through a side room upstairs to an apartment that we were informed was prepared for us.

Q. What, if anything, was said about the apartment?

A. Mrs. Kelly said in speaking of a place for us to stay, she said she had prepared a room for us and had it fixed up and she had done quite a lot of work fixing it up for us.

Q. Who was it that said that? A. Mrs. Kelly.

Q. This defendant? A. Yes.

Q. Where was it, this apartment? [32—19]

A. Upstairs over the front of the pool-hall.

Q. Describe what you saw when you went into the pool-hall?

(Testimony of Mildred Hilkert Bowles.)

A. Just an ordinary pool-hall, with an ordinary pool-table. Near the door was a counter and a short bar and two pool-tables at the back. There was a card-table at one side and at the front end was a side room we always had to go through in going upstairs.

Q. What, if anything, was said by either of these defendants to you regarding your work?

A. Why, we asked what we were to do and were told we were to play and sing, play the piano and sing and entertain, and we were asked that evening to sing a song or two and requested to be excused on the plea of a long journey and being fatigued and we went upstairs then to refresh ourselves, and Mrs. Kelly and Mr. —— and ourselves went to dinner to the Frisco; then we tried to excuse ourselves from going downstairs but Mr. and Mrs. Kelly said, "Come down awhile," they wanted to introduce us to some of the boys and we just waited around and just met people that evening, and then we went upstairs about eleven o'clock; and the next day was supposed to be the opening—we were told the next night would be a grand opening.

Q. What, if anything, was said about clothes?

A. Mrs. Kelly asked us what we had in the way of wearing apparel and we told her we had some organdie dresses but she didn't seem to be enthused about them and said it wouldn't do, we had to have something more striking, and she told us to go and see what we could find in the way of evening

(Testimony of Mildred Hilkert Bowles.)

dresses, and we went out to the different stores and came back and said we didn't find anything and she said she would go with us and she did, and we went to the different stores and found an evening [33—20] dress at Miss O'Bryan's which Mrs. Kelly at that time paid for, and we went to Mrs. Ashton's and Mrs. Dougherty's looking for something and the dresses that were shown to us were very extreme and Miss O'Bryan showed us some dresses that she said were especially for the girls,—they were dresses that were made for the girls working on the line and we told her it wouldn't do at all. Then we looked and found this dress at Miss O'Bryan's that was all right and suitable—it was very low neck but it would do for me; and Peggy found a dress at Mrs. Dougherty's that passed approval and it was shortened and bought.

Q. What, if anything, did the defendant Kelly say about the dresses?

A. He didn't see the dresses until we were dressed that evening and I asked him how he liked them and he said he guessed they were all right, and I said I thought we were undressed and he said, "the less you have on the better." The other dress was low neck and short sleeves and he said it wasn't short enough.

Q. What did he remark about the other dress?

A. Well, he said it wasn't appropriate, it wasn't what he wanted but he guessed it would do.

Q. Who do you mean when you say Peggy?

(Testimony of Mildred Hilkert Bowles.)

A. I mean Margaret.

Q. Who is she? A. My sister.

Q. What is her name?

A. Margaret Johnson.

Q. In this wire she is described as Margaret Hilkert? A. Yes.

Q. How did that happen?

A. Her name is now Johnson. [34—21]

Q. How was it described as Hilkert then?

A. She was married on the fifth of last month.

Q. Now, on the first evening you were in Kelly's tell us what happened?

A. The first evening we arrived there?

Q. The first evening you entertained.

A. We were told we were to go on shift at 6 o'clock for the opening night. We came on at 6 and were to play the piano and sing, and we sang and entertained a few moments and meanwhile we were introduced to different men that appeared as the new girls, and they were asked their opinion as to our appearance and what they thought of the new girls.

Q. By whom?

A. By Mr. and Mrs. Kelly, both of them.

Q. What were your duties there?

A. We were told the first night we were to sing and entertain and we were also told we were to help whenever we were needed to serve drinks to anybody that cared to ask for them.

Q. Did you serve drinks? A. We did.

Q. What kind? A. I served beer and—

(Testimony of Mildred Hilkert Bowles.)

Mr. RAY.—We object and move to strike the answer.

Mr. DUGGAN.—The question goes to the atmosphere and condition of the place.

After argument the objection was sustained and motion to strike granted.

Recess to 1:30.

AFTERNOON SESSION.

Continuation of the Direct Examination of MILDRED HILKERT BOWLES by Mr. DUGGAN.

[35—22]

Q. What, if anything, was said to you by the defendants or either of them regarding what your duties were?

A. We were told by Mr. Kelly that we were to sing and play the piano and to drink with the men and to sell them liquor, because the more we drank with them the more they bought and the more money it was for the house.

Mr. RAY.—We move to strike that.

Motion denied; defendants allowed an exception.

Q. How long were you there?

A. Two weeks and just about two days.

Q. Can you at this time fix the day you got there?

A. You mean the day we arrived?

Q. Yes.

A. The evening of the 20th of August.

Q. And you say you were there two weeks and two days?

A. We quit there on the 5th of September, Labor Day, the night of Labor Day.

(Testimony of Mildred Hilbert Bowles.)

Q. Did you about the first or second day you were there take a trip to the Lake?

A. We arrived on Thursday; Friday we worked and Saturday night we went out to Lake Spenard.

Q. Who if anyone was with you?

A. Mr. Kelly, Mrs. Kelly, Mr. Sidney Anderson and Mr. Evans, the driver of the car.

Q. Was the other girl with you? A. Yes, sir.

Q. What was done on that trip?

Mr. RAY.—We object to that.

Objection overruled; defendants allowed an exception.

A. On the trip? Why, we merely went out in the car, drove out and they had liquor along and we drank that,—it was passed [36—23] around quite frequently. On arriving at the lake Mr. Evans, Mr. Anderson, Margaret and myself went in swimming. We were there a short time and got in the car and came back to town.

Mr. RAY.—We move the testimony be stricken, not pertaining to any of the issues charged in the indictment.

The COURT.—The answer will be stricken. Confine your questions solely to what was done when the two defendants or either one of them was present and what was done by their connivance and instigation.

Q. What, if anything, did the Kellys or either one of them say regarding going out to the Lake?

Mr. RAY.—We object to that as leading. (Sustained.)

(Testimony of Mildred Hilkert Bowles.)

Q. Who invited you to go out there to the Lake?
Mr. RAY.—We object to that.

Objection overruled; defendants allowed an exception.

A. It was Mr. Anderson suggested it to those in the box at the Frisco where Mr. and Mrs. Kelly, myself, Mr. Anderson, Mr. Evans and Margaret were having supper, after two o'clock,—after the pool-room was closed, and it was very agreeable to everybody.

Q. Who had the liquor?

A. That I don't know for a positive fact, whether Mr. Anderson or Mr. Evans had it, but it was brought in. They made arrangements and it was brought there to the box.

Mr. RAY.—We move that be stricken as not responsive to the question.

Motion denied; defendants allowed an exception.

Q. What, if anything, took place after returning from the Lake?

A. Well, we got into the car at the Lake and drove home; it was early in the morning and we drove to the back entrance of the pool-hall and went up the back stairs and we all stopped in Mrs. Kelly's apartment. [37—24]

Q. Who was present?

A. Mr. and Mrs. Kelly, Mr. Sidney Anderson, Mr. Evans, Margaret and I.

Q. What happened?

A. Mr. Anderson at that time was very intoxicated and was put to bed.

(Testimony of Mildred Hilkert Bowles.)

The COURT.—Confine your testimony to what was said and done by the defendants and in their presence.

The WITNESS.—They were all together.

The COURT.—You are not to testify unless it took place in the presence of Mr. and Mrs. Kelly or one of them.

The WITNESS.—They were there, Mr. and Mrs. Kelly, and Mrs. Kelly requested him to get off of her bed and stretch out on the davenport in their room and I made my excuses, that I was tired and asked to be excused and started for our apartment, thinking that Peggy was following me and it was dark; when I got up to the apartment Mr. Evans had followed me and I said “Where is Peggy?” and he didn’t know and I said “Well, let us go back and get her,” and he asked me to talk a few minutes and finally put up the proposition that I was to go to bed with him and I refused.

Mr. RAY.—Who was this talk with?

A. This was with Mr. Evans.

Mr. RAY.—We ask that it be stricken.

The COURT.—It will be stricken unless connected with the defendants.

Q. Did you afterwards have any conversation with either of the defendants regarding that?

A. I went back to the room and asked Peggy why she hadn’t followed me and she said that Mrs. Kelly had stopped her.

The COURT.—Don’t tell what anybody said unless Mr. and Mrs. [38—25] Kelly were present.

(Testimony of Mildred Hilbert Bowles.)

The WITNESS.—They were present at this time, they were all there together, in their apartments, and she asked me where I had been. I asked her, why didn't she follow me, and she asked why I didn't come because she sent Mr. Kelly after me and Mr. Kelly never appeared in my apartment whatever,—Mr. Evans had followed me. Then I went to my apartment and went to bed.

Q. Afterwards did anyone come up to your room?

A. Yes. The following Monday I was introduced to a Greek or a Russian they called John.

Q. By whom? A. By Mr. Kelly.

Q. What did he say when he introduced you?

A. He told me this was John, he was a nice man and wanted me to be nice to him. John was a foreigner and couldn't speak very nicely and Kelly told me to invite him—"Invite John up to your room; you know how to entertain him; he is good for a lot of money, he has all kinds of money"; and John spoke about a dinner and I agreed to it and I told him he could come up to the apartment for dinner at two o'clock the next afternoon, and then Mr. Kelly told me he would put up a hard luck story; he said, "You girls are hard up and I will put up a hard luck story to the Greek."

Q. Who was present?

A. Kelly, I and my sister.

Q. Anyone else?

A. Not directly, right there—it was in the pool-hall. And about eight o'clock the next morning

(Testimony of Mildred Hilkert Bowles.)

somebody knocked at the door; it was this John,—after the pool-hall had opened; and I asked him what he wanted and he said he came to see about the dinner and I told him it was too early. [39—26]

Mr. RAY.—Were the Kellys there?

A. Not at that time, no; and I asked him how he got up there and he said Kelly was downstairs and let him come up. There was no possible way for him to get up without passing through the pool-room.

Mr. RAY.—We object to that.

The COURT.—John's statement is hearsay—it may be stricken.

Q. What, if anything, was said between you and this John in the room?

Mr. RAY.—We object to that—we will reserve our objection.

A. He came up to the room for dinner and we had a nice little dinner and then while I was ironing he came out point blank in the presence of my sister and asked me to go to bed with him and I refused.

Q. Was anything said about money?

A. Yes, he started in at ten dollars; he said I was hard up. Kelly told him we were hard up.

Mr. RAY.—We object to all the testimony given by this witness since the last objection was reserved, and move it be stricken.

The COURT.—The motion will be denied—I don't think the witness should go any further now without connecting up what she has stated.

(Testimony of Mildred Hilkert Bowles.)

Q. How much did he offer?

A. He offered me finally one hundred dollars.

Q. Did you speak to Kelly afterwards about it?

A. Yes, I told him about the Greek offering me a hundred dollars and he said, "What, do you want to tell me a man offered you a hundred dollars?" and he said, "Did you take it?" and I said "No," and he said, "You are a damned fool," and he said if we kept on the way we were going we would blow into the poorhouse; he said we girls had more good offers up here—

Mr. RAY.—We object on the ground that the offer to connect the [40—27] testimony in a legal and lawful manner has not been met.

Objection overruled and defendants allowed exception.

Q. What, if anything, did Kelly say about this man?

A. Well, at different times John came in, frequently, nearly every night in fact, and Kelly insisted I be nice to him because of what he was going to do, he was going to advance him some money in a business way,—he was trying to raise some money on an oil claim and he told me to be nice to him, the Greek would fall for it, and I asked him what it was to me whether he or anybody else made any money in that way, and he said, "You can feather your own nest at the same time you help me,"—he said, "You play it right and you can feather your own nest."

Q. Were you asked by either of the defendants here to play cards in Kelly's pool-room?

(Testimony of Mildred Hilkert Bowles.)

A. Yes.

Q. More than once? A. Several times.

Q. What was said by either one of the defendants?

Mr. RAY.—We object to that.

Objection overruled; defendants allowed an exception.

A. Kelly would say, “Here, girls, I will give you \$5.00; stake you in the game.”

Mr. RAY.—We object to that.

Objection overruled; defendants allowed an exception.

Q. Who was playing in those games besides you?

A. I played at times, my sister played other times and sometimes both of us played in the same game, with the dealer of the cards and anybody else that cared to sit in the game.

Q. What was the condition of the players?

A. Some of them were intoxicated and some were not. [41—28]

Q. What kind of language was used?

A. Profanity to a great extent—if the game was getting along very nicely there was very little said,—they played cards.

Q. What, if anything, did Mrs. Kelly say to you about meeting other girls?

Mr. RAY.—We object to that.

The COURT.—You can show the associations the defendants brought this girl into.

Mr. RAY.—I object to the question for the reason that the defendants here are upon trial upon the charge of transporting in interstate commerce

(Testimony of Mildred Hilbert Bowles.)

two girls—there is no charge of their having anything to do with any other young ladies and the testimony sought to be elicited by the question propounded to the witness can in no way tend to prove the charge in the indictment.

The COURT.—This seems to be laying the foundation for another question. The objection will be overruled.

Defendants allowed an exception to the ruling.

Q. Did you meet any other women there?

A. Yes, sir.

Q. Who were they?

Mr. RAY.—We object to that.

Objection overruled; defendants except.

A. Girls from the line.

Q. What do you mean by that?

A. The sporting element, houses of prostitution.

Q. What, if anything, did either of the defendants say at that time?

A. Mrs. Kelly came to the side door and hollered clear across the pool-hall—"Girls, come here, I want you to meet some of the girls from the line."

[42—29]

Q. What, if anything further, was said by Mrs. Kelly at this time?

Mr. RAY.—We object to the question propounded by the District Attorney to the witness on the ground that it seeks to prejudice the jury and inflame their minds against the defendants and can in no manner tend to prove whether or not on the third day of August, 1921, the defendant

(Testimony of Mildred Hilkert Bowles.)

Kelly wired to the witness on the stand with the intent and purpose to induce her to live the life of a prostitute or to live a life of debauchery or to indulge in other criminal practices, as charged in the indictment.

Objection overruled; defendants allowed an exception.

Q. At this time did she say anything further to these girls or say anything further than you have already stated when she called you over acrossed the hall?

A. Not just at that moment.

Q. What, if anything did she say?

The COURT.—About the same subject.

A. I walked acrossed the pool-hall to the side room—these girls were in the back room, and Mrs. Kelly was standing at the door and I asked her what was the idea, that I wasn't accustomed to associating with these people, and she said, "These girls are all right, they are good fellows, good spenders, come in and meet them," and me and my sister walked in and were introduced to the girls and they bought several drinks and there were two or three men with them.

Mr. RAY.—We move to strike the answer.

Motion denied; defendants except.

Q. Did Mr. Kelly come in there? A. Yes, sir.

Q. What, if anything, did he say?

A. He said the girls were good fellows. [43—30]

Q. Did Mr. Kelly say anything further about getting acquainted with the girls at this time?

(Testimony of Mildred Hilbert Bowles.)

Mr. RAY.—We object to the question.

Objection overruled; defendants allowed an exception.

A. Not that night.

Q. Did he at any other time? A. Yes, sir.

Q. Who was present?

A. Mr. Kelly and several girls from the line and their escorts.

Q. Were you there? A. I was.

Q. Was Mrs. Kelly present?

A. She was in and out.

Q. What was said?

A. The girls asked us to go out with them.

Mr. RAY.—We object to the question and move to strike the answer on the ground that it is incompetent, irrelevant and immaterial.

The COURT.—Nothing will be admissible unless Mr. or Mrs. Kelly was present and we will exclude any statements by this witness unless made and done in the presence of Mr. and Mrs. Kelly, or either of them.

Q. What, if anything, did Mr. Kelly say at this time, the second time?

A. Why, we were invited by the girls to go with them and the party and we refused and Mr. Kelly said, "Why not?" and was speaking about he and his wife, the fun they had, and said, "Go down and see the nice place the girls have, look it over and see how they do business."

Mr. RAY.—This is all subject to our objection and exception.

(Testimony of Mildred Hilkert Bowles.)

The COURT.—Very well. [44—31]

Q. Do you remember any other time when you had a conversation about going down the line?

A. Yes.

Q. About what time was that?

A. It was in the evening—it is impossible for me to recall just exactly the times. We were on shift from six o'clock in the evening until two in the morning.

Mr. RAY.—We ask to strike that.

The COURT.—The motion will be denied and exception allowed; specify the time as near as you can.

A. It was in the first week of our arrival.

The COURT.—And state the time of day and where it took place and if any persons were present.

Q. Do you remember the time of day?

A. It was in the evening, I judge about nine or ten o'clock.

Q. Where was it—where did it take place?

A. In the back room, a side room of the Kelly pool-hall.

Q. Who was present?

A. Mr. Kelly and Mrs. Kelly at times and my sister and girls from the line and their escorts.

Q. What, if anything, was said by Mr. and Mrs. Kelly, or either of them?

Mr. RAY.—We object to the question.

Objection overruled; defendants except.

A. The girls from the line came in and treated us as—

Mr. RAY.—We object as not responsive.

(Testimony of Mildred Hilkert Bowles.)

The COURT.—The answer may be stricken.

Mr. DUGGAN.—It will be necessary in this instance to state something that the girls stated in the presence of these defendants.

The COURT.—Anything stated in the presence of Mr. or Mrs. Kelly is admissible. [45—32]

Q. What, if anything, was said by the girls in the presence of Mr. and Mrs. Kelly?

Mr. RAY.—Same objection.

Objection overruled; defendants except.

A. One of the girls asked us to have a drink and I drank a glass of beer with them and Peggy took a glass of grape juice but refused to drink and she asked me if we smoked—

Q. Who said that?

A. One of the girls—the party was in the back of the hall—and she said, “What is the matter—don’t you do anything?” and Peggy said, “No, I don’t,” and she said, “What is the idea? You are nothing but a chippy working for Kelly.”

Q. Who was present?

A. Kelly himself.

Q. What did he say?

A. At that time he said nothing but walked out, and served the drinks. When the girls left—

Q. What did Kelly say afterwards?

A. He said, “Why had the girls left? They should have stayed longer, they were good for three or four more drinks and we made them sore and were driving business away from the hall.”

Mr. RAY.—We object to that and move to strike.

(Testimony of Mildred Hilkert Bowles.)

Objection overruled and motion denied; defendants except.

Q. Calling your attention to about four or five days after you arrived—you say you came on the 20th? A. Yes, the 20th.

Q. Somewhere about the 24th or 25th, did you have some altercation with some foreigners in this room in the presence of Mr. Kelly?

Objected to; sustained.

Q. Have you seen that gown before? (Showing dress to witness.) [46—33]

A. Yes.

Q. What is it?

A. It is an evening gown that I wore at Kelly's. It is the dress I bought and wore the first night, the opening, at Kelly's.

Q. About four or five days after you arrived did you meet some Greeks in the back room in Kelly's?

A. Yes, sir.

Q. Who was present?

A. There were five or six Greeks in there and Mr. Kelly in and out serving drinks. We were called in to help entertain and drink with the men.

Q. Who called you in? A. Kelly.

Q. What did he say?

A. He told us to go in—first he called us in and introduced us—"Here are the new girls, boys." They were men I understood from the Eska mine and strangers in the town. He introduced us as new stuff.

Q. Did you go in? A. Yes, sir.

Q. What, if anything, happened there?

(Testimony of Mildred Hilkert Bowles.)

A. At that time the men took familiarities, putting their arms around us and pawing and feeling of our persons and pinching every part of us. When Kelly walked out I served a few drinks to them for a time and I asked him not to send us in there any more—they were rough and intoxicated, one very much so.

Q. What did Kelly say?

A. They were a fine bunch, they were good spenders, they were in from the mine and had all kinds of money and it was a long time since they saw any girls like us and not to be a fool, [47—34] they wouldn't hurt us and to go ahead.

Q. At this time were your clothes torn?

Mr. RAY.—We object to that.

Whereupon the jury was excused and argument had on the objection. (Jury returns.)

The COURT.—The objection will be overruled and exception allowed, with the understanding that this is a preliminary question, to lay the foundation for something more definite. A. Yes.

Q. Where was it?

A. In the back room, in the pool-hall.

Q. What pool-hall? A. Ragtime Kelly's.

Q. What was the condition of these people that were there as to sobriety?

Mr. RAY.—We object to that.

Objection overruled; exception allowed.

A. They were intoxicated.

Q. Is that the gown you have there? A. Yes.

Q. Is that the one you wore at that time?

A. Yes, sir.

(Testimony of Mildred Hilkert Bowles.)

Q. What, if anything, happened to it?

A. It was torn here at both shoulders.

Q. Who tore it?

A. One of the men in this back room.

Mr. RAY.—Did Kelly tear it? A. No, sir.

Mr. RAY.—We object to it.

The COURT.—It is preliminary—it will be necessary to connect one of the defendants with it or it will be stricken. [48—35]

The WITNESS.—I positively requested Kelly several times that evening not to send us to this room and we were told that it was one of our duties and for us to drink and it was necessary for us to go there.

Q. Who said this? A. Kelly.

Mr. RAY.—We object to it.

(By the COURT.)

Q. How long did this happen after you arrived here? A. Toward the end of the week.

Q. What day of the week was it?

A. Saturday and Sunday was the main days.

Q. The 20th of August was Saturday?

A. Yes.

(By Mr. DUGGAN.)

Q. And this would be the latter part of the following week? A. Saturday or Sunday.

Q. How many days after you arrived here?

A. I guess six or seven.

Q. What, if anything, did Kelly say at this time to the men who were present, when your dress was torn?

(Testimony of Mildred Hilbert Bowles.)

Mr. RAY.—We object on the ground that any statement relative to what happened to the young lady's dress by the defendant Kelly can in no way bind the defendant Mrs. Kelly.

The COURT.—The jury will be instructed that neither defendant is bound by the statement of the other, unless in the presence of the other, * * * the object is to show his attitude toward the transaction which took place a few moments before.

Q. Was Kelly present?

A. Not right at that moment—he came in serving drinks.

Q. When? [49—36]

A. Directly after and before.

Q. What did he say, if anything, to the men that were present at the time the dress was torn?

A. He told them to treat us easy, to go easy with us, and handle themselves carefully—they are not used to rough treatment.

Q. At that time that you have just mentioned did Kelly say anything about what your duties were?

Mr. RAY.—We object as repetition.

Objection overruled; defendants except.

A. Why, when I was angry at the treatment and the mauling we had received—

Mr. RAY.—We object to that.

Q. Say what he said?

A. Kelly told us it was our duty to drink with the men, that that was what we were here for—that I was a regular touch-me-not. He told me at that time if we kept on the way we were acting,

(Testimony of Mildred Hilkert Bowles.)

we would end up at the poorhouse,—a repetition of something that was said before.

Q. How long did you say you were in this place?

A. We arrived on the 20th of August and left there on the 5th of September.

Q. Other than those you have mentioned did any other person come to your room?

A. At several different times men came up there,—came in the morning before we were up and knocked. This Greek was up several times, repeatedly, in fact nearly every day, all the time we were there.

Q. Did you receive a phone call while there from anyone?

Mr. RAY.—We object to that on the ground that she might have received a hundred phone calls and Kelly know nothing about it.

The COURT.—It is preliminary. Objection overruled; defendants allowed an exception. [50—37]

A. Yes, sir.

Q. Can you fix the time?

A. It was late in the evening.

Q. About what day?

A. The Sunday night before Labor Day.

Mr. COFFEY.—We object as too remote.

Objection overruled; defendants except.

Q. Did you answer this phone call?

A. I did, after a delay of about fifteen or twenty minutes.

Q. Who called you to the phone.

A. Why, a stranger. I was in the dance-hall,—they were having a dance and a strange man came

(Testimony of Mildred Hilkert Bowles.)

and told me I was wanted at the phone—I didn't believe him, and Margaret called me. I answered the telephone, the receiver was down, and it was waiting on the counter in the phone room.

Q. Was anyone near at the time, any of the defendants?

A. Both of them; Mrs. Kelly was standing at that time toward the end of the pool-tables and Mr. Kelly at the end of the counter—he was at one end and the phone at the other end.

Q. What was the nature of the conversation on the phone?

Mr. RAY.—We object to that, any conversation between this girl and some man—whether he is here or not, we don't know.

The COURT.—The objection will be sustained, but she may testify whether she made a report of the phone conversation to the Kellys.

Q. Who received the call on the phone before you came? A. Mr. Kelly.

Q. What, if anything, did you say to the Kellys or either one of them regarding this phone call?

A. In my conversation I was asked to go to the Frisco and I said, "No, I am working," and Mrs. Kelly said, "It is all right, it is all right." [51—38]

Q. Was that overheard by Mrs. Kelly?

A. Yes, sir. I said I was not through working until two o'clock and it would be impossible to leave without their permission and she said, "It's all right, it's all right," and I was told to meet this party outside the door. He said, "It's all

(Testimony of Mildred Hilkert Bowles.)

arranged to meet me outside," and Mrs. Kelly said, "It's all right, it's all right," and as I started out she said, "You want to work fast before this party cools off."

Q. What, if anything, happened afterwards?

A. I met the man and I understood we were going to the Frisco and instead of that he said, "No, we are not going to the Frisco at all—"

Mr. RAY.—We object to this.

The COURT.—Was this conversation between you and the man outside?

The WITNESS.—This was the man that telephoned.

Objection sustained.

Q. Who told you you were going to the Frisco?

A. I heard it over the phone and Mrs. Kelly agreed there was a party on.

Q. To go where? A. To the Frisco for supper.

Q. What happened after you got outside?

Mr. RAY.—We object to that, conversation between outsiders, not in the presence of Mr. or Mrs. Kelly.

Mr. DUGGAN.—I will withdraw the question.

Q. Where did this party take you?

Mr. RAY.—We object to the question.

Objection sustained.

Mr. RAY.—We move that the last three answers be stricken.

Motion denied; defendants except. [52—39]

Q. What, if anything, did you say to Mr. Kelly when you came back from this trip?

Mr. RAY.—We object to that.

(Testimony of Mildred Hilker Bowles.)

Objection overruled; defendants allowed an exception.

A. I walked in and Kelly said, "What are you doing back here?" and I said, "Where should I be if not here?" and he said, "Did you get anything?"

Q. What did you say?

A. I said, "No," and I walked up through the pool-room and asked where my sister was and he said he didn't know.

Q. What further did Kelly say?

A. Why, in regard to that, right then, nothing.

Q. Did Kelly ever speak to you about a hunting trip?

Mr. RAY.—We object to that—it must be shown when it occurred.

Q. When was this?

A. The conversation about the hunting trip?

Q. Yes.

A. In the early part of the second week we were there, Monday or Tuesday, because there had been plans—

Mr. RAY.—We renew our objection on the statement of the witness that it was two or three weeks after her arrival here.

The jury being excused, after argument by counsel—

By Mr. DUGGAN.—The Government at this time offers to prove by the witness Mildred Hilker Bowles that about ten days after arriving at Kelly's pool-hall the defendant Kelly stated to the witness Mildred Hilker Bowles and in the presence of her

(Testimony of Mildred Hilkert Bowles.)

sister Margaret Hilkert Johnson that his wife was going away on a hunting trip, that he, another man and Margaret and Mildred would have a good time while she was gone; that Mildred asked the defendant Kelly what he meant by a good time and he stated in [53—40] reply thereto, a bedroom party with all the trimmings, or evidence to that effect.

The COURT.—I think you can do that.

Defendants allowed an exception.

(Jury returns.)

Q. Did you have a conversation with Frank Kelly regarding Mrs. Kelly going on a hunting trip? A. Yes, sir.

Q. What was said?

Mr. RAY.—We object to the evidence sought to be elicited by the question propounded in view of the offer made in the absence of the jury—First, it in no way binds the defendant Mrs. Grace Kelly and is being introduced in a case where Grace Kelly is codefendant with Frank Kelly; second, said testimony cannot in any manner tend to prove whether or not on August 3, 1921, the defendant Frank Kelly or the defendant Grace Kelly furnished transportation by telegraph transfer to the witness Mildred Hilkert Bowles for the purpose of inducing or enticing her to come to Alaska to live a life of prostitution and debauchery; third, that it is an attempt to inflame and prejudice the minds of the jury and befog them as to the real issue in the case.

(Testimony of Mildred Hilkert Bowles.)

The COURT.—It can only go to the question of intent and could not under any circumstances be used as evidence against Mrs. Kelly—she neither made the statement nor was she present when it was made—and the jury will be so instructed. The objection will be overruled. Defendants allowed an exception.

A. He informed me that as soon as the holidays were over Mrs. Kelly was going to take a vacation and going on a hunting trip and while she was away that Mr. Kelly and I and another gentleman [54—41] and Peggy would have a party and I asked him what he meant by a party, and he said, “We will have a regular party, we will have some good stuff, some bonded stuff, we won’t drink mule,” and I said, “If you mean a bedroom party, count me out,” and he said, “Once wouldn’t hurt you; you are only human.”

Mr. RAY.—We ask that be stricken.

Motion denied; defendants except.

Q. Do you remember the time you left Kelly’s? The date?

A. When I left the building or quit working?

Q. Quit working.

A. Ten o’clock, Labor Day night, around or about ten o’clock, on the 5th of September.

Q. Why did you leave?

A. Because Kelly and I had been quarreling and arguing more or less for two days and that night, all that day and all the evening men were intoxicated and we were subjected to all kinds of insults; and—

(Testimony of Mildred Hilkert Bowles.)

Mr. RAY.—We object to this character of testimony and move to strike the answer.

The COURT.—The motion to strike is denied. It will be covered by instructions.

Q. Finish your answer if you have anything more to say.

A. I got absolutely no protection from Mr. Kelly, who had been drinking heavily and I frequently asked him not to send us in there and he informed us we were working for him and that is what we were supposed to do.

Q. Is this a statement of Kelly to you?

A. Yes—I asked him to at least protect us; he was intoxicated and *and* he told me that we were there for that purpose, to entertain and by treating the men the way we were doing that night [55—42] we were driving them out of the house. driving the best customers out of the house, and at ten o'clock, after arguing back and forth, I quit and walked off.

Mr. DUGGAN.—That is all.

Cross-examination by Mr. MURPHY.

Q. You arrived here, did you not, about the 18th of August?

A. I think it was on the 20th.

Q. You testified that when you got here Mrs. Kelly examined your wardrobe and she said the clothes you had were not gaudy enough and she went out and purchased some gaudy clothes for you?

(Testimony of Mildred Hilkert Bowles.)

A. She told us to look at some evening gowns, and went with us while we purchased them.

Q. She purchased the evening gowns, and is it not a fact that when she purchased those evening gowns, she purchased a hat for you?

A. No—she paid outright for my dress.

Q. Didn't she purchase a hat for you?

A. No, sir. I got the hat, and opened an account in my own name at Mrs. Dougherty's, and a few days after she came there and took up the bills and then informed me of the fact that I owed her this money.

Q. Is it not a fact that Mrs. Kelly went to Mrs. Dougherty and arranged to have you people to get stuff there?

A. She merely vouched for our account, said we were working for her and would be able to pay.

Q. And do you think you would have gotten the credit at Mrs. Dougherty's if Mrs. Kelly did not vouch for those accounts?

A. No doubt, because we had no trouble in getting credit up in this country.

Q. And you think you could have gone to Mrs. Dougherty and got [56—43] credit?

A. On the say so that I was working there and making money there, yes.

Q. Who paid the account?

A. Mrs. Kelly paid it.

Q. Besides the dress you got, that also included underwear, corsets, and shoes and hats, did it not?

(Testimony of Mildred Hilkert Bowles.)

A. It included a pair of shoes to wear with the dress.

Q. Didn't she also pay for hats for you and your sister?

A. She paid them on her own volition, nobody else's.

Q. Didn't she pay for them? A. Yes, sir.

Q. And she bought a lot more stuff for you than gaudy dresses? A. That was all.

Q. Is this a sample of the gaudy dress she bought? (Showing dress.) A. That's it.

Q. And at the time she purchased that dress, you said in your examination that Miss O'Bryan showed you other clothes that girls down the line wore? A. Yes, she did.

Q. And did she advise you to get some clothes of that kind?

A. No sir, she did not. She said that wouldn't hardly do.

Q. This dress you got was not of much value then—did you ever wear it any place besides Kelly's?

A. I have never had it on except at Kelly's.

Q. What dress did you wear at Valdez when you sang before the pioneers?

A. A serge dress I had.

Q. You are as positive of that as every other statement you have made? A. Yes. [57—44]

Q. What is your name at the present time?

A. Mildred Bowles.

Q. How old are you?

A. 25, the 16th of January.

(Testimony of Mildred Hilkert Bowles.)

Q. What was your name when you arrived at Anchorage? A. Mildred Hilkert.

Q. What was your father's name?

A. That I refuse to answer—that has no bearing whatever on this case.

Q. Is Miss Peggy your sister?

A. That I refuse to answer.

Q. Do you know whether or not she is your sister? A. I refuse to answer.

Mr. MURPHY.—I think she ought to answer.

The WITNESS.—Pardon me, Judge, but he has objected clear through this testimony to every statement which is made and I object to going into my personal affairs.

The COURT.—I don't see how that is material.

Q. Were you married before you came to Alaska?

A. I had been; yes.

Q. What was your husband's name?

A. I refuse to answer that.

Q. Were you divorced from him? A. I was.

Q. Where at?

A. I refuse to answer that.

Q. How long have you been in the entertainment business.

A. I entertained about six months at one time when I was about 17 years old; other than that, very little.

Q. Were you in the entertainment business in Seattle before coming here? [58—45]

(Testimony of Mildred Hilkert Bowles.)

A. No.

Q. Did you ever work in the Butler?

A. I entertained two evenings at the Butler.

Q. Have you entertained at the Pig'n Whistle?

A. I never entertained there; I had full charge of that place, on the floor.

Q. You were not one of the entertainers?

A. No.

Q. When did you work there?

A. I worked there from along in May to the last part of September.

Q. Did your team-mate Peggy work there with you? A. She worked one evening.

Q. Did she work with you at the Butler?

A. Yes.

Q. When you first came to Anchorage, that first day, Mrs. Kelly took you up to her room and showed you the rooms? A. Yes, sir.

Q. And you had a conversation with her at that time? A. Yes.

Q. You had several conversations with her?

A. Yes.

Q. She never directed you at any time to become a prostitute, or asked you? A. Point blank, no.

Q. Or Mr. Kelly? A. No.

Q. And all these incidents you think are just by inference, from what she did? A. Yes.

Q. Now, on the occasion when you said you went out to the Lake, what time did you leave Anchorage? [59—46]

A. I would say on or about three o'clock.

(Testimony of Mildred Hilbert Bowles.)

Q. It was after the performance?

A. It was after we closed at the pool-hall.

Q. And you drove out to Spenard Lake?

A. Yes.

Q. You went in swimming, you said?

A. Yes.

Q. Were Mr. and Mrs. Kelly present when you went in swimming?

A. Yes, they were sitting in the car.

Q. You had several drinks going out?

A. Yes.

Q. And Sid got stewed? A. Yes.

Q. What was his condition when you left?

A. He was partially intoxicated at that time?

Q. How were you? A. I was sober.

Q. All the way through? A. Yes.

Q. What time did you get back to the pool-hall?

A. I am not positive as to the time but I would judge it was between 5:30 and 6 in the morning.

Q. It was dark? A. Just getting dawn.

Q. So it was pitch dark when you were out at the Lake?

A. It wasn't pitch dark—there was light enough to see; you could see. You understand the conditions in this country at that time—it wasn't pitch dark.

Q. It was dark when you started to go from the Kelly apartments to your apartment?

A. Yes, it was dark—the light outside wasn't enough to light the building. There was a tiny electric light hanging by the [60—47] piano.

(Testimony of Mildred Hilkert Bowles.)

Q. That was lighted?

A. It was always lighted. We turned that up to use for the bathroom.

Q. Who was operating the dances upstairs?

A. I don't know.

Q. Do you know whether or not Mr. Kelly had anything to do with it?

A. No, I think Mr. Kelly leased the dance-hall—I am not positive.

Q. You went up there on the evenings there were dances there—you went up to dance?

A. Once or twice, yes.

Q. On these occasions I will ask you whether men ever went to your apartments, at your solicitation?

A. There has been people come in there, that is, one night, but that was the night we quit—there was quite a party while we were getting ready to go out.

Q. Now I will ask you, on certain occasions when you were dancing, if you and your dancing partners didn't go in there? A. No.

Q. Never, at any time—you are positive of that?

A. Yes.

Q. Who was in the pool-hall on the evening that Mrs. Kelly asked you to come into the room and meet the girls from the line?

A. The pool-hall was very much crowded.

Q. Do you know anybody that was there?

A. Not by name—I didn't know anybody by name.

(Testimony of Mildred Hilkert Bowles.)

Q. If you met the girls in there, do you know their names?

A. One was called Little Peggy and the other was called—I don't remember.

Q. You don't remember that?

A. No. [61—48]

Q. Do you remember the names of the escorts?

A. No.

Q. And Kelly said the girls were good fellows?

A. Yes.

Q. You met them? A. Yes.

Q. Did you ever meet girls from the line before?

A. No.

Q. Now, there was an invitation that you had to go hopping, and the Judge intimated he didn't know the meaning of the term and I will confess I don't, so would you kindly inform us what this term hopping means? Do you know the meaning of the term?

A. I am not positive, no, not entirely, but what I gathered, it was going through there, going to their places of business, out with them to places of that kind.

Q. Had you ever heard the term before it was used there? A. I had heard it, yes.

Q. And the meaning you get from it, you would infer it was going down to visit the girls at their homes?

A. The meaning I got from it that night.

Q. Was that the meaning you got from it the first time you heard it? A. No.

(Testimony of Mildred Hilkert Bowles.)

Q. What was it—stepping along?

A. Yes, stepping along—just exactly.

Q. Now you say Mr. Kelly made a remark about the dress—is that very much shorter than the one you have on? A. About the same length.

Q. On the lower end? A. On the lower end.
[62—49]

Q. On the upper end it is an evening dress.

A. Very extreme.

Q. Nobody would ever accuse you of wearing an immodest dress now? A. No.

Q. I will ask you, Mrs. Bowles, if you are acquainted with one Pat Van Klier? A. No.

Q. Did you ever meet a fellow here named Pat Van Curler?

A. That is different—yes, I know him.

Q. You knew him very well?

A. He was one of the boys in the American Legion and was wounded and in the hospital at Spokane when I was there.

Q. And you met him coming up here?

A. The next I saw him he was coming up on the boat.

Q. Did you meet him in Seattle when he was there? A. Yes.

Q. Did you write him a letter from Valdez?

A. Perhaps.

Q. I will ask you if that is your signature?

(Showing letter.) A. Yes.

Q. You wrote that portion of the letter?

A. Yes.

(Testimony of Mildred Hilkert Bowles.)

Q. Did you see the other portion of it that Miss Peggy wrote? A. I didn't see it.

Q. You knew that she wrote it—that she was corresponding with Mr. Van Curler—I will ask you, who wrote the other portion of the letter—do you recognize that writing? A. I do, yes.

Q. Who was it—whose writing is that?

A. I think you will have to ask her.

Q. Do you know whose handwriting it is?

A. Yes, I do. [63—50]

Q. Whose is it? A. Margaret's.

Mr. MURPHY.—We offer the letter in evidence.

The COURT.—The only part of it admissible at this time is Mrs. Bowles' part of the letter.

Mr. MURPHY.—I will read that portion of it into the record.

The COURT.—Very well.

Mr. MURPHY.—(Reading:)

“Hello Pat Dear: Well, here we are and aint we got fun. Ye Gods it's sure cold here and I'm official fire builder. Do wish you were here, we'd have all kinds of fun. Guess Peg's told you all the news. We leave for Anchorage next week. Do wish it were all over. Be good dear and take care of yourself. As ever,

MILDRED.”

Q. Now, you testified in your examination in chief about leaving the employment of the Kellys—you spoke about leaving there, when you left finally? A. Yes.

(Testimony of Mildred Hilkert Bowles.)

Q. Did you ever have any dispute with them at that time as to the ownership of these clothes?

A. Not that night.

Q. Did you later, before leaving?

A. Yes, sir.

Q. I will ask you if you went over to see the marshal about it? A. Yes.

Q. Had you paid for those clothes at the time you wished to take them away?

A. We not only paid for the clothes but were never paid any wages for the two weeks we were there and Kelly not only tried to keep the clothes, was not only holding the things he bought but everything else—our trunks, including our pet animals.

Q. What animals? A. Pup and cat.

Q. You say positively that Kelly never gave you any money at all [64—51] while you were there?

A. He never gave us a cent.

Q. Did the money that you were to receive from him include board for you? A. No.

Q. Did you draw any money for supplies and food?

A. No, we opened a charge account at the Co-operative Store, which was paid recently by us.

Q. And was all of this stuff you got at the Co-operative Store used while you were at Kelly's or after you left there?

A. Yes, we never bought a thing at the Co-operative Store after we left Kelly's and charged it—everything was bought and paid for.

(Testimony of Mildred Hilkert Bowles.)

Q. Where did you go to work after you left?

A. Didn't go to work, for several days, and then went to the Central pool-hall.

Q. Where is the Central pool-hall?

A. I don't know what street it is on.

Q. It is down below C Street, is it not, on 4th?

A. It is the corner below the Union Cafe.

Q. Did your sister get employment at the same time? A. No, not at that time.

Q. Where did Peggy go to work?

A. She went to work three or four days, I am not sure, for Mr. Belmont who just started up in business.

Q. What business—another pool-room?

A. Just soft drinks and cigars.

Q. Where is that located?

A. It is next door to the grocery-store that is on the corner of Main Street, near the Central pool-hall.

Adjourned until Thursday at 10 A. M. [65—52]

Thursday, February 23, 1922.

MORNING SESSION.

Continuation of the Cross-examination of MILDRED HILKERT BOWLES by Mr. MURPHY.

Q. You have talked this matter over with the Government officials a great deal, haven't you?

A. Not very much.

Q. With a great many of them—You have talked it over with Mr. Truitt?

A. At the time the grand jury came in.

(Testimony of Mildred Hilbert Bowles.)

Q. And you have talked it over with Mr. Duggan? A. Yes, some.

Q. And Mr. McCain?

A. Just the last day or two.

Q. And Mr. Hurley?

A. Well, just the last day or two.

Q. And Mr. Mossman?

A. No, very little to Mr. Mossman except at the time about the clothes.

Q. Have you talked it over with Mr. Casler?

A. Not directly on the case—he would ask a few questions.

Q. Mr. Bouse? A. No.

Q. Mr. Brenneman? A. No.

Q. Mr. Roseen? A. No.

Q. Did you talk it over with Mr. Kitzmiller here?

A. No, nothing about the case—I never talked to Mr. Kitzmiller about the case.

Q. Did you talk it over with the other patrolman, Mr. Watson? [66—53]

A. Nothing about the case.

Q. The other day you said in your examination in chief that you did some card playing over at Kelly's. Did you learn to play cards after you came up here? A. No.

Q. You knew before you came here?

A. Yes, sir.

Q. How long after you left here was it before you were married?

(Testimony of Mildred Hilkert Bowles.)

A. Left here on the 11th of October and I was married on the 5th of November.

Q. Were you in Seward a while before you went to Valdez?

A. Just over one night—I took the train and then the boat.

Q. You like the country up here?

A. Yes, sir; I do.

Q. A pretty good country? A. Yes.

Q. Glad you came up, aren't you?

A. Not to Anchorage, no.

Q. You are glad of the trip to Alaska?

A. Yes.

Mr. MURPHY.—That's all.

Redirect Examination by Mr. DUGGAN.

Q. Mrs. Bowles, will you describe to the jury the language used by the defendant Kelly in introducing you to men?

A. Why, Kelly would usually say, "Boys, I want you to meet the girls, this is new stuff, Kelly's famous beauty, new stuff, just from the states—what do you think of them? Look them over."

Mr. RAY.—We ask that this is stricken. It is not in chief.

Motion denied; defendants except.

Q. Were you in the service during the war?

[67—54] A. Yes.

Q. In what capacity? A. As a yeomanette.

(Testimony of Mildred Hilkert Bowles.)

Q. Where? A. Bremerton.

(By Mr. MURPHY.)

Q. Under what name did you enlist as yeomanette?

A. Mr. Murphy, seeing that this has no bearing whatever on this case, I decline to answer.

Q. Who was chief yeomanette?

A. Margery Wilson.

Q. How long did you serve?

A. From the 28th of June, 1917, to November, 1918.

Q. The other day you stated you were in charge of all the work in the Pig'n Whistle—how long were you in charge of all the work?

A. On the floor I said—by that I mean I had under my jurisdiction all the waiters, the boys in the dining-hall—I was in charge, superintendent of service.

Q. You had nothing to do with the entertaining?

A. No, sir.

Q. How long were you entertaining at the Butler? A. Two days.

Q. How were you advertised in the bill?

A. I was taking the place of a girl in the bill.

Q. Do you recall how you were advertised?

A. There was no advertising—I was merely taking her place for a few days, a girl that was ill.

Witness excused. [68—55]

**Testimony of Margaret Hilkert Johnson, for the
Government.**

MARGARET HILKERT JOHNSON, a witness called and sworn in behalf of the Government, testified as follows:

Direct Examination by Mr. DUGGAN.

Q. What is your name?

A. Margaret Hilkert Johnson.

Q. Are you acquainted with the defendants Frank Kelly and Mrs. Grace Kelly? A. I am.

Q. When did you come to Alaska?

A. I arrived in Anchorage the 20th of August.

Q. How did you happen to come?

A. My sister received a telegram from Mr. Kelly offering us work as entertainers, at his place, and in answer to that message we came on the "Alameda."

Q. Did you come in response to that telegram?

A. Yes, sir.

Q. When did you leave Seattle?

A. We left Seattle the day the "Alameda" sailed—I believe that was the tenth of August.

Q. I show you Government's Exhibit "H," purporting to be a steamship ticket and ask you if that is your name signed to it? A. Yes, sir.

Q. Did you sign that? A. Yes.

Q. Is that the ticket upon which you traveled?

A. Yes, sir.

Q. Where did you get it?

(Testimony of Margaret Hilkert Johnson.)

A. Got it at the steamship office in Seattle on Second Avenue.

Q. Whom from, do you remember the gentleman?

A. I don't remember the gentleman's name, I remember his face—he was the gentleman in charge of the steamship office. [69—56]

Q. And did you get to travel on the steamship on that ticket? A. Yes, sir.

Q. When you came to Anchorage, who, if anyone, did you meet?

A. Mr. Kelly met us at the railroad station, with a car.

Q. Where did you come?

A. We went up to his place of business.

Q. What, if anything, did he say at the time you got there?

A. When we arrived he told us, "This is the place, girls. How do you like it?" and we went inside and met his wife.

Q. What, if anything, was said about quarters?

A. We suggested that we should go to a hotel and find a room and Mr. Kelly told us we didn't need to, that his wife had prepared an apartment for us over the pool-hall.

Q. And where did you stay during the period of your employment with the defendants?

A. We lived in this apartment over the pool-hall.

Q. What part of the pool-hall is it?

A. It is over the front part, faced on the street—I don't know, it is right over what they call the

(Testimony of Margaret Hilkert Johnson.)

bathroom, projects over a considerable part of the cabaret.

Q. Did you have any conversation with either of the defendants regarding clothes? A. Yes.

Q. Will you tell what was said?

A. On the first evening Mrs. Kelly asked us what we had to wear and we told her we had a couple of organdie dresses we considered quite suitable and she asked us what they were like and we described them to her and she said she didn't think they would do. Kelly listened, and said we wanted something startling, the following night would be the first night, the grand opening and the boys would all be there to look us over [70—57] and we wanted something startling, something bright, and the next morning about 11 Mrs. Kelly came and asked to see the dresses and we showed her the dresses and she said they wouldn't do, they were not startling enough, we needed something different and to go and see what we could find, and we went to the stores and looked around and came back and told her we couldn't find anything and she told us she would go with us and we would find something and she took us first to see Miss O'Bryan, and introduced us as the girls that were working for them and said we wanted some dresses to wear and Miss O'Bryan brought out some queer looking garments and showed us and told us that was what the girls usually wear and I asked what girls—I wouldn't wear dresses of that kind.

Q. You were the one that asked the question?

(Testimony of Margaret Hilkert Johnson.)

A. I think we both asked the question, we usually talk at once, and she told us that was the type of dress that the girls usually wore and I asked her what girls and I told her I wouldn't wear that style of dress, it appeared to me almost like a kimona—

Mr. RAY.—We move to strike out how it appeared to her.

(Stricken out.)

Q. What was said?

A. I made that remark, that it looked like a kimona to me.

Q. What was said?

A. Then a black dress was brought out, that was a formal evening dress and that was decided upon for my sister. Then we went to Mrs. Ashton's and looked at dresses there and there was one dress shown to me that Mrs. Kelly said would do; it had bodice top and straps over the shoulder, long sleeves, and I refused to take it because it looked as though it had been worn and I [71—58] said as much, and the girl in the outer room told me—

Mr. RAY.—We object.

The WITNESS.—What she said explains a great deal about it.

Q. Was Mrs. Kelly there?

A. Yes, she was standing there, she could have heard it.

The COURT.—You may omit that.

(Testimony of Margaret Hilkert Johnson.)

The WITNESS.—I didn't buy that dress—I didn't buy it because it had been worn by a girl on the line and had been returned to Mrs. Ashton. Then we went to Mrs. Dougherty's and there I found a dress I thought would do; it wasn't extreme, it had sleeves, although the neck was low, and I told Mrs. Dougherty I would take the dress.

Q. Did you take the dress?

A. I did when alterations were made; it was too long but it was shortened slightly.

Q. As I understand it, your sister got a dress at Miss O'Bryan's? A. Yes.

Q. And you got a dress at Mrs. Dougherty's?

A. Yes.

Q. When you took your dresses home, what if anything was said by the defendants or either one of them regarding the dresses?

A. They didn't see them until we came down stairs about six o'clock, ready to go to work, and Mr. Kelly came into the back room to look us over, see how we looked, and Mildred made the remark she felt as though she was undressed and Kelly said to both of us, "Well," he said, "that's the way the boys like it, the less you have on the better, they like it short at the top and on the bottom," and he looked at my dress and said, "Where did you get that thing?" "I bought that at Mrs. Dougherty's; you should like it, it goes well with your famous green dress"—it was Kelly green—and he said it would do until [72—59] I could get something different later on.

(Testimony of Margaret Hilkert Johnson.)

Q. Calling your attention to the first day or the first evening you were there, did you make any trip with the defendants?

A. The first evening we went to work, we did.

Q. Where, if any place, did you go?

A. We went out to Lake Spenard.

Q. Who was present?

A. Mr. and Mrs. Kelly and the driver of the car and two other gentlemen, my sister and myself.

Q. Was there any liquor drunk? A. Yes.

Mr. RAY.—We object as leading and move to strike the answer.

Objection overruled and motion denied.

Q. What was the condition of the party as to sobriety?

Mr. RAY.—We object to that. Kelly is not being tried for drinking or for going out in company with other people.

The COURT.—It is admissible as showing the kind of atmosphere these girls were brought into after their arrival. * * * The question can only be considered as bearing on the intent with which the defendants brought these girls up here and for no other purpose. Objection overruled. Defendants allowed an exception.

A. They were all more or less under the influence of liquor, one or two more so and some of them not so much.

Mr. RAY.—We make the further objection and move to strike on the ground that this testimony

(Testimony of Margaret Hilkert Johnson.)

is incompetent, irrelevant and immaterial and does not tend to prove the issues in the case.

Objection overruled and motion denied; defendants except.

The COURT.—The testimony is admitted for the sole purpose of proving intent, if it has any tendency to do that.

Mr. RAY.—It is understood that there is an objection on the [73—60] part of each defendant to this line of testimony now sought to be elicited.

The COURT.—Yes, I understand that all objections are made in behalf of both defendants and it is understood that all the testimony in regard to this particular occurrence, this trip to Lake Spenard, goes in under the objection of both defendants.

Q. When you came back from the trip where did you go?

A. We went up to Mr. and Mrs. Kelly's apartment, in the back of the hall.

Q. What, if anything, was said there by Mr. or Mrs. Kelly?

A. When we started to leave the apartment and go to our apartment Mrs. Kelly detained me for a few moments saying she had a coffee-pot for us to use in the morning when we woke up and my sister went up to the apartment and I stayed and talked until suddenly I said, "Where's Mildred?" and I asked Mr. Kelly if he would go and call her—Mrs. Kelly offered to get some coffee and I asked Kelly to call Mildred back and he went out of the

(Testimony of Margaret Hilkert Johnson.)
apartment, presumably to our apartment, and when he came back I said, "Where's Mildred, isn't she here?" and he said, "No, she is fixing her hair, she will be here in a few minutes." We went on talking and in about ten minutes I said, "Where's Mildred? It's strange she doesn't come back, it doesn't take her that long to comb her hair," and I started out of the apartment and as I walked into their kitchen I met Mildred coming through the door, and I said, "Where have you been?"

The COURT.—Were Mr. and Mrs. Kelly within hearing?

The WITNESS.—Yes, they were standing there—and she replied, "Where have you been?"

Q. Did any of the party accompany Mildred to the room?

A. I don't know whether they accompanied her or not but there was a gentleman went to the apartment—I don't know that he walked [74—61] up with her but he went to the apartment and he came back right behind her—he had been there.

Mr. RAY.—We ask that the last statement be stricken as a conclusion of the witness.

(Last statement stricken out.)

Q. Did you see him in the apartment?

A. I did not see him in the apartment—I was down in the other apartment.

Q. Did you see him coming out?

A. Not out of our door.

(Testimony of Margaret Hilkert Johnson.)

Q. What, if anything, was said by the defendants or either of them regarding your duties?

A. We asked what we were to do—

Q. Let me ask you, when did you first have any conversation regarding your work or duties there?

A. The day after we arrived.

Q. You say you came on the 20th? A. Yes.

Q. Then that would be the 21st?

A. Yes, sir.

Q. What was said and by whom, that is regarding your duties?

A. Mrs. Kelly told us our orders, that we were to play and sing at intervals during the evening and when we were not playing or singing, we were to help Kelly if he needed it, that we were to help him serve beer and white mule and to drink with the guests—

Mr. RAY.—We object to that and move to strike the answer.

Objection overruled and motion denied; defendants except.

The WITNESS.—(Continuing.) Because when we drank with the boys, they bought more; if we stood and talked and drank with them, they would stick around longer and they would buy more beer.
[75—62]

Q. While you were in your room, did anyone come to the room?

Mr. RAY.—We object unless the defendants are connected up with it and knew something about it.

(Testimony of Margaret Hilkert Johnson.)

The COURT.—You will have to connect it with the defendants in some way.

Mr. DUGGAN.—It is preliminary to opening up a matter that is material.

The COURT.—If this is a preliminary question the objection will be overruled.

Defendants allowed an exception.

A. Yes.

Q. Can you tell about what time it was, as to the date and the time of day, the first time?

Mr. RAY.—We object to that “first time.”

Objection overruled; defendants allowed an exception.

A. I believe it was on Monday, the first Monday we were there and our first visitor arrived about eight o'clock.

Q. What day did you arrive, the 20th?

The COURT.—The Court will take judicial notice of the fact that the 20th was Saturday.

A. I don't know what the date was but I believe it was Monday, about eight o'clock in the morning; some one rapped on our door and came in. We had no key to the apartment at that time. It was a man they called Russian John.

Q. Do you know his full name?

A. Magoff, I believe—I don't know whether that pronunciation is correct or not—John Magoff.

Q. What occurred there?

A. He came in with a few bottles of beer and asked us concerning a dinner party that we were to give him that afternoon, asked [76—63] us

(Testimony of Margaret Hilkert Johnson.)

if he could come and we said, "Yes," but to get out then, that we were tired—we had retired late, so he left after drinking one or two of his bottles of beer and about ten o'clock sent up a chicken for the dinner that afternoon—he returned again about two for the dinner.

Q. Was anything said to you by the defendants or either of them about his coming there for dinner? A. Yes.

Q. Who said it?

A. Mr. Kelly suggested it to us first.

Q. What did he say?

A. Sunday evening he said that big John had fallen for Mildred and that he had lots of money and the proper thing to do was to give him a little dinner in our apartments, that sour-doughs like that little touch of home life, and to put up a hard-luck story to him. He said, "Get him up in your apartment, give him a little dinner and you know the rest—you can entertain him better than I could"; he said, "I will talk to him this evening and give him a hard-luck story"; and he said, "You said you would like to have a fur coat; you can get two or three out of him if you play your cards right."

Q. What, if anything, did this man John Magoff say to you—go ahead and tell what he said.

A. When he came to dinner, you mean?

Q. Yes. Did you hear him say anything to Mildred?

(Testimony of Margaret Hilkert Johnson.)

Mr. RAY.—We object to any conversation between these ladies and their guest when the Kellys were not present.

Objection sustained.

Q. Did you talk to Kelly about Magoff?

A. Yes. [77—64]

Q. What was said in that conversation?

A. We asked him what was the idea in sending that man up there to our room loaded down with beer and in view of the question he had asked—

Mr. RAY.—We object to that.

The COURT.—State what was said by you or Kelly.

A. We told him we didn't want him hanging around, we didn't like him—we couldn't understand what he was talking about, and didn't want him there and Kelly informed us very plainly that we were damned fools.

Q. Was anything said about an offer?

A. Yes.

Q. What?

A. We told him he had offered a hundred dollars to stay with my sister and Kelly said, "Do you mean to tell me that you turned that down?" and she said, "I certainly did," and he said, "All I can say to you is that you are both damned fools and you will end up in the poorhouse if you keep on that way."

Q. Did he say anything further at this time?

A. He said then if we would play our cards right and listen to him—that he had pointed out to us live

(Testimony of Margaret Hilkert Johnson.)

guys and would continue to do so—and if we listened to him, we could all go out of here with enough to keep us, that we girls could make six or seven thousand dollars and when we got outside, nobody need to know how we got it.

Q. Were there any crowds there? A. Yes.

Q. Were they large crowds or small crowds?

A. Large crowds for a town of this population.

Q. What kind of crowds? [78—65]

A. They were made up on intoxicated foreigners and soldiers.

Q. Altogether?

A. Yes, they mingled together.

Q. No other kind?

A. There were a few business men came in but they didn't loiter long and we had very little to do with them—we were not encouraged to hold conversation with them.

Q. The kind of crowds that you have described, was that the kind that was there all the while or not?

A. All the while that I was there—there was a continuous flow of soldiers and foreigners.

Q. In regard to the talk, what kind of talk was prevalent there?

A. Language that I had never heard in my life but language that a woman would not repeat.

Mr. RAY.—We object and move to strike.

Objection overruled and motion denied; defendants except.

Q. Did you have a key to your apartments?

(Testimony of Margaret Hilkert Johnson.)

A. Yes.

Q. When you got the apartments, were you given a key to them at the same time? A. No.

Q. What, if anything, did the defendants or either of them say,—how would they announce a number or selection?

A. Mr. Kelly would say, “Peggy, go up and tear off one for them, come up and tear off a little one for the boys,” and when he asked my sister to play he said, “Come and jazz them up a little bit, Mildred, give the boys a little jazz, they like it.”

Q. Did you have any talk in the presence of the defendants with an old man there?

A. Yes, a friend of Mr. Kelly’s.

Q. About what time was this? [79—66]

A. I don’t know, it was along in the evening—
one evening when we were busy.

Q. About what time?

A. It was three or four days after we arrived—
I don’t know just the date or hour.

Q. Where was it?

A. In the pool-room. I was standing behind the showcase of cigars—the bar, I guess they call it.

Q. What was said?

A. This gentleman, when I gave him a bottle of beer, asked me if I would stay with him that night and I said, “I certainly won’t, I don’t do those things”; and he said, “Beg your pardon, some girls do and some girls don’t,—you never can tell,

(Testimony of Margaret Hilkert Johnson.)

you miss a lot of good things by not asking," Mr. Kelly was standing right beside me serving beer to some chaps from out on the line and he looked at the old chap and winked and said, "She's a little bit shy, you want to be careful about talking to her like that, she is shy before other folks," and laughed, and the entire crowd laughed, and the old man couldn't continue his conversation because I left.

Q. Did he say anything at this time about getting anything he wanted?

A. That evening Mr. Kelly was drinking with the boys and he said, "Boys—"

Q. Were you present?

A. Yes. He said, "Boys, you can get anything in this house as long as you have got the money to pay for it."

Q. Did you have another conversation at which the defendants or either of them were present in the back room? A. Yes.

Q. About what time was that, do you recall?
[80—67]

A. Some time during the first week.

Q. Can you fix the time closer than that?

A. No, I can't, I don't know what particular night it was—it was some time toward Friday.

Mr. RAY.—We object to this.

The COURT.—It all goes to the question of intent.

Q. Tell what was said, tell the conversation.

(Testimony of Margaret Hilkert Johnson.)

A. One conversation in particular that I had with Kelly in the back room—he called me in to talk it over with me and he sat at the table and he said, “Peggy, you are little and fat and the boys like you,” and he said, “If you will listen to me you can get out of here with some money”; he said, “I will give you the tip as to the live guys and you can take them up to your apartment and entertain them,” and I looked at him, and he said, “You don’t have to do anything wrong any more than lifting this jar and setting it back, if you don’t want to, but you will get a great deal more out of it if you do.”

Q. Calling your attention to an incident in the back room, did you have any trouble in this back room that you have spoken of, with foreigners?

Mr. RAY.—We object as leading.

The COURT.—It is preliminary.

A. Yes.

Q. What happened?

A. Kelly called me one evening and he said, “Peggy, there are some friends of yours in here that want to see you,” and I said, “Friends of mine in this place?” and he opened the door and took me in and as he stepped inside the door, he threw his arm around my neck and said, “Boys, I want you to meet my sweetheart; isn’t she little and soft and fat?” and there was laughter and immediately they wanted to find out if [81—68] I was soft and fat and I objected to them putting

(Testimony of Margaret Hilkert Johnson.)

their hands and arms around me and I went out, but I was called back—

Q. Who called you?

A. Kelly—"Come and drink with the boys," he said—"as I told you if you drink with them, they will stay longer and buy more"; he said, "That is what you are here for, to help sell that stuff"; and I said, "I don't want to drink, I don't like it," and he said, "That don't make any difference, come in," and when I went in, a big Greek took me clear off the floor with his arms and it made me sore and I called for Mildred and started to fight and I got out of there, and they got up and walked out. There had been a little trouble between them and Mildred and my trouble made them angry and they got up and went out and Kelly said, "What do you mean? You are driving my business away; there goes three or four hundred dollars this evening and you have driven them out—what is the idea? You are regular touch-me-nots."

Q. In the presence of the defendants did you meet any prostitutes at this place? A. Yes.

Q. Calling your attention to the first instance—what time was that?

A. It was eight or nine o'clock.

Q. What day was it?

A. It was during our first week at Kelly's.

Q. What was said.

A. Mrs. Kelly came to the door of the back room and called, hollered to us, "Girls, come here, I want you to meet some of the girls from the

(Testimony of Margaret Hilkert Johnson.)

line," and we went over and asked her if she expected us to associate with them and she said, "They won't rub off and they're alive; they spend good money, they want to meet some of the chaps; come in and meet them," and we went in [82—69] and met them.

Q. Who introduced you? A. Mrs. Kelly.

Q. Did you at any other time meet the same kind of people?

A. The same kind, but not the same ones.

Q. The first that you have just testified to, do you remember the names of any of them?

A. There is just one I remember, because her name was the same as mine,—they called her Little Peggy; I don't know what her last name was, and I don't remember the others, but I remember her.

Q. Can you describe them?

A. One of them had bobbed hair and this little girl had dark hair and dark eyes—she was extremely pretty and didn't look—she did not look like what I thought she was.

Q. Did you at any subsequent time meet the same kind of people there? A. Yes.

Q. Can you set the date, the day?

A. No, I cannot—the second time we met any of them was in the early part of the second week—I don't know whether it was Monday or Tuesday or Wednesday.

Q. Were the defendants present or either of them? A. Yes, sir.

Q. Who was present when this happened?

(Testimony of Margaret Hilkert Johnson.)

A. Mrs. Kelly introduced us that time and Mr. Kelly came in several times while we were with them.

Q. What was said by Mrs. Kelly?

A. She just introduced us to some of the girls; she told us they were girls from the line and took us in and introduced us as the girls working there and one of them asked me to sing, and [83—70] later we went back and they invited us to drink with them on that occasion.

Q. What, if anything, was said by Mr. Kelly?

A. On that occasion he didn't say anything,—it was the occasion before when he asked us—they invited us to go down hopping; asked if we would like to go.

Q. State what was said by Mrs. Kelly?

A. She said, "Go ahead, girls, Frank and I had several enjoyable evenings with the girls of the town but we can't go now, we are too busy and it doesn't look well for the business"; she said, "They were very nice to us and we had a lovely time," and Mr. Kelly came in just then and she said, "Frank, do you remember when we went to so-and-so's house?" I didn't catch the name.

Q. What did Mrs. Kelly say on the second occasion, if anything?

A. On the second occasion when we were invited to go down, she told us to go down and see some of their places, and—

Mr. RAY.—We object to this.

Objection overruled; defendants except.

(Testimony of Margaret Hilkert Johnson.)

Q. You may proceed.

A. Mr. Kelly asked me if I had ever been in a place of that sort and I said, I had not and didn't care to go and she said, "You ought to go down and see how those girls do business."

Mr. RAY.—All this goes in under our objection.

The COURT.—You should renew the objection whenever a new transaction is brought in.

Mr. RAY.—In order to prevent interruption I requested the Court to consider that the testimony last sought to be elicited was under our objection, on the ground that it did not tend to prove the issues and was introduced for the purpose of inflaming the minds of the jury. [84—71]

The COURT.—On your statement that you understood the Court allowed your objection to stand for all of this evidence, the record will show that that is your understanding and the Court will allow the record to show that you do object to all of this. There was some testimony given a while ago that I would have excluded if you had made a motion for it because it was, I think, beyond the question of intent, but all of this will be subject to your objection and exception. I will explain to the jury why this is admitted and how far they can use it.

Q. Did you meet a man at Kelly's place by the name of Laroque? A. Yes.

Q. Where did this take place?

A. In Kelly's pool-hall.

Q. What place in the pool-hall?

(Testimony of Margaret Hilkert Johnson.)

A. Back by the piano.

Q. About what time—what day was it?

A. It was Saturday before Labor Day.

Mr. COFFEY.—We object as too remote.

Objection overruled; defendants except.

Q. What did Laroque say to you?

Mr. RAY.—We object to that as incompetent, irrelevant and immaterial and not tending to prove any of the issues of the charge against these defendants.

The COURT.—The objection will be sustained unless it is a preliminary question that can be connected up.

Mr. DUGGAN.—We can't connect it by this witness with Kelly but we can connect it by another and we contend therefore that it is material.

The COURT.—You may ask the question.

Defendants allowed an exception to the ruling.

A. Well, he talked to me; part of it I couldn't understand [85—72] because I didn't pay any attention, but he did ask me if he could stay with me that night, and Mr. Kelly had told me that he was a live guy.

Mr. RAY.—We move to strike the last part of that answer.

(Last part of answer stricken.)

Q. What, if anything, did Mr. Kelly say to you about him?

A. He told me he was a live guy.

Mr. RAY.—We object to that.

(Testimony of Margaret Hilkert Johnson.)

The COURT.—Was it before or after this that Mr. Kelly spoke to you about this man?

A. He spoke to me before I met him and he spoke to me while he was there and he spoke to me again concerning him after the fellow had gone.

The COURT.—It may be admitted.

Defendants allowed an exception to the ruling.

Q. What did you say Kelly said?

A. He told me he was a live guy. The first time he mentioned it he told me that chap had been off the line on the 4th of July and had spent about \$450, that he hadn't been in since and he had plenty of money and he was a live guy and not to let him get out of the place.

Q. Did he say anything to you about it afterwards?

A. Yes—after the chap had gone?

Q. Yes. Did you see him afterwards, Laroque?

Mr. RAY.—We object to that.

Objection overruled; defendants except.

A. No, I never saw him again until I came back this time.

Q. What did Kelly say afterwards, if anything?

A. He said, "What do you mean by letting that fellow get out of the place?" he said, "I told you he was a live guy; he fell for you, and what did you let him go out for? Now he will go [86—73] somewhere else and won't come back."

Q. Did you see a man at this place, a soldier, by the name of Sergeant Kelly? A. Yes, sir.

(Testimony of Margaret Hilkert Johnson.)

Q. Was anyone with him? A. Yes.

Q. Who was it?

A. The first time there was a woman with him.

Q. About what time, do you remember?

A. About 11 o'clock.

Q. What day? A. I don't know the date.

Q. As near as you can remember?

A. It was during the first week some time but I don't know what one of those days, but it was during the first week we were there.

Q. Who was the woman?

A. I don't know her name.

Q. Who was she?

A. She was one of the girls from the line.

Mr. RAY.—We object to that.

The COURT.—I presume it is preliminary.

Q. Did Mrs. Kelly or any of them know these people were there? A. Yes.

Q. Go ahead and tell what happened.

A. This girl would come in and Mrs. Kelly would go into the back room with her and then would go upstairs to Mrs. Kelly's apartment, and later this soldier, Kelly, would follow. At one time there were two of them, an older woman and this one girl and they went back to the apartment and this chap went upstairs and Mrs. Kelly entertained them in the back. [87—74]

Mr. RAY.—We move to strike that.

The COURT.—It may be stricken.

Mr. RAY.—Now, we move the jury be instructed to disregard it and the defendants object to the continued attempt to introduce testimony without

(Testimony of Margaret Hilkert Johnson.)

the rule laid down by your Honor, the only object of which can be to inflame the minds of the jury as to other offenses than that stated in the indictment.

The COURT.—Gentlemen, all this testimony goes only to the possible bearing it may have on the question of intent, of which you are the exclusive judges, as you are of all the other facts in the case. Nothing is admissible for the purpose of showing any other offense than the one charged in the indictment, but it is admissible incidentally to prove other offenses if it has a tendency to show the intent with which these defendants acted. This testimony is stricken out because the Court holds it has no such direct tendency.

Q. Did Mr. Kelly ever speak to you about a hunting party? A. Yes, he spoke to me.

Q. Can you fix the time?

A. It was the Thursday or Friday before Labor Day. There were three big days coming up—it was Thursday or Friday before that, before Saturday, Sunday and Monday.

Q. What did he say?

Mr. RAY.—We object to that as incompetent, irrelevant and immaterial and not tending to prove any of the issues in the case and has been ruled out by the Court with reference to the witness Mrs. Bowles.

The COURT.—It was admitted to allow the jury to consider it in connection with the intent. The objection will be overruled and exception allowed.

(Testimony of Margaret Hilkert Johnson.)

A. He said, "Well, it will soon be over, girls, we have three hard days ahead of us." He said, "The old lady is going on a hunting trip and when she is gone Mildred and Sid and I and you will have a regular party," and I said, "What do you mean by a regular party?" and he said, "We will have two or three quarts of good stuff to drink, we will have bonded stuff. We will sell the mule here but we will drink good stuff," and Mildred said, "Do you mean a bedroom party, Kelly?" and he said, "Sure, you are only human and it won't hurt you once."

Mr. DUGGAN.—I think that is all.

Cross-examination by Mr. RAY.

Q. Your name is Hilkert? A. It was; yes.

Q. What is the name of the young man you married recently? A. Johnson.

Q. And when were you married?

A. The 14th of January.

Q. Just after New Years? A. Yes, sir.

Q. Before you came to Alaska had you been entertaining in public places?

A. No, sir; I never entertained in my life—I have sung in church, church choirs, and Ladies Aid Societies and tea parties, but never entertained.

Q. Was this in Seattle?

A. Seattle or anywhere where I have ever lived; never have entertained.

Q. Did you ever sing in the Butler Hotel?

A. No—my sister did but I never did.

Q. Your sister sings? [89—76]

(Testimony of Margaret Hilkert Johnson.)

A. Yes.

Q. And plays the piano? A. Yes, sir.

Q. How long has she been in public entertaining?

A. I don't know just how long. I know about five or six years ago she did a little entertaining and two or three years ago she entertained a couple of evenings at the Butler and helped entertain at Kelly's this last year.

Q. Just the last year didn't you both have an engagement at the Butler?

A. No, nothing at all.

Q. At the Pig'n Whistle?

A. I worked for her about a week at the Pig'n Whistle, just before the 4th of July.

Q. Did you sing there?

A. No, I helped with the table.

Q. And what was your sister doing?

A. She was superintendent of service.

Q. Is that what you call in a big establishment a head waiter?

A. No, it wasn't a head waiter. She had charge of the girls—she settled difficulties between the girls and the manager—she saw that the service was good, that things ran smoothly, without friction, as far as possible.

Q. Where were you living in Seattle?

A. At the Normandie Apartments—509 of the Normandie Apartments.

Q. Had you lived in the Green Lake country before this?

A. No, never lived at Green Lake as far as I can remember.

(Testimony of Margaret Hilbert Johnson.)

Q. How long have yourself and your sister been together—were you with her during her marriage there? A. No, very little.

Q. How long have you been with her? [90—77]

A. At different intervals; there were times we were together and times separated—I don't know how long.

Q. You are quite sure you had no engagement at the Butler Hotel when you came up here?

A. I am perfectly sure—I danced at the Butler as a guest but never worked there and had no desire to do so.

Q. Had you been married before you came to Alaska? A. No.

Q. Had you taken part in church entertainments, singing in church concerts?

A. At no time.

Q. Where had you had your public training as an entertainer? A. I never had any.

Q. Did you attend a dramatic school?

A. I never did.

Q. Just a natural talent you had? A. Yes.

Q. Have you been a cabaret performer?

A. No.

Q. Never have—until you came to Alaska?

A. Never have—that wasn't a cabaret entertainment.

Q. You know what a cabaret is?

A. I do—I have gone to them as a guest.

Q. At the time you received this wire, on the first day of August, addressed to Mildred Hilbert—you say she is your sister?

(Testimony of Margaret Hilkert Johnson.)

A. Yes,—we will call it that, yes.

Q. Do you know Fred Waller? A. I met him.

Q. Where did you meet Fred Waller?

A. In Seattle. [91—78]

Q. How many times have you met Fred Waller?

A. Once.

Q. Do you know what business he was engaged in? A. No.

Q. Do you know that he was a gambler?

A. I heard it afterwards.

Q. Now, you received this wire—Fred Waller just arrived in Anchorage and spoke to me about you and your sister wanting to come to Anchorage—You told Fred Waller you would like to come to Alaska, did you?

A. Told him I always wanted to go and see Alaska.

Q. You had that same feeling that a great many people have, that they would like to see Alaska?

A. Probably.

Q. Love of adventure prompted your statement to Fred Waller?

A. It was a desire to travel, not adventure.

Q. You have had some adventure up here in meeting some very fine young men, and especially in Valdez?

A. That is not adventure; that is romance.

Q. So you found romance in Alaska?

A. Certain parts of it.

Q. After your statement to this man whom you know to be a gambler, you came to Alaska and found romance?

(Testimony of Margaret Hilkert Johnson.)

A. Not concerning him—I found no romance there; I am speaking of my husband when I say romance?

Q. Now, after you received this wire did you make inquiry as to who Ragtime Kelly was?

A. There was no one of whom we could inquire.

Q. Did you inquire of the steamship officials?

A. No—how would they know anything about him? [92—79]

Q. Did you go down to the Alaska Bureau of the Chamber of Commerce, Seattle, and make inquiry as to whom he was?

A. No, I didn't know they had one.

Q. Did you know anything about Fred Waller?

A. Yes; he was described to us as a business man.

Q. By a gentleman friend of Waller?

A. By a gentleman friend of Mr. Waller—he was introduced to us as a gentleman.

Q. Where did you meet him?

A. At the home of a friend of ours. He and his wife introduced us to Fred Waller.

Q. Did you meet him at the Butler Hotel?

A. No, I met him at the home of a friend.

Q. You are sure you didn't meet him at the Butler?

A. I am sure I never made acquaintances out in public like that.

Q. Did you go to any Ladies Aid Society in Seattle and ask them to investigate Ragtime Kelly before you entered into a contract with him?

A. No, the Ladies Aid Society wouldn't know anything about him.

(Testimony of Margaret Hilkert Johnson.)

Q. You had been under contract with these people or had been singing for them?

A. No, the last year I was there I had been ill and hadn't been singing.

Q. Were you aware of the telegrams sent in reply to the offer Kelly made to you?

A. I knew there had been a cable sent, stating what wages we would accept.

Q. I hand you a copy of the wire—(Handing witness paper.)

A. I didn't see the telegram—my sister told me about it, that she had sent it.

Q. At what price? [93—80]

A. I believe she said I was to work for \$20 a week.

Q. And that was the understanding and the transportation came and you came to Alaska?

A. Yes, sir.

Q. Pursuant to this contract? A. Yes, sir.

Q. You knew that the contract had been ratified—you knew that Kelly had accepted your offer, in your wire?

A. By sending the tickets I imagine he did—there was no contract written out or signed, however, concerning our work there.

Q. You say you had had no previous theatrical experience? A. Never had.

Q. Can you say whether that statement—you both pay five dollars per week till transportation is paid out—is that the usual contract that is made with theatrical performers?

(Testimony of Margaret Hilkert Johnson.)

A. I don't know—I have never made a theatrical contract, have never seen or wrote one.

Q. Did you ever sing in public prior to your appearance here in Kelly's? A. Yes.

Q. Where?

A. I sang a year in Spokane—I sang at the Saint Paul's Cathedral, about three years ago—I was one member of the choir, nothing spectacular, except I sang in the choir. I have sung at various tea parties and club meetings of Mamma's friends and friends of mine.

Q. Where? A. Spokane and Seattle.

Q. When did you come to Seattle from Spokane?

A. The last time I came back I believe it was April, some time I [94—81] think, toward the last of April.

Q. The first or second night you arrived, there was a party on, of which you were a member and you went to Lake Spenard? A. Yes.

Q. You went back to Kelly's house and stayed there that night? A. Yes.

Q. Was the party distasteful to you?

A. It certainly was.

Q. Why didn't you leave it?

A. I had no desire to walk from Lake Spenard into Anchorage—I didn't know the road and didn't want to walk in—it was better to put up with it, and I would rather stay with my sister.

Q. Did you drink anything?

A. I sipped something over at the Frisco and didn't like it and didn't drink it.

Q. Did you drink before coming to Alaska?

(Testimony of Margaret Hilkert Johnson.)

A. A little bit, yes—we have always had wine in our own home.

Q. How far away is that home?

A. I refuse to answer—it has nothing to do with the two weeks we were at Kelly's.

Q. I don't care to embarrass you if you don't care to answer.

A. Very well, I don't—it has nothing to do with this case.

Q. Now, Peggy, after you had had a row with Kelly you talked pretty bitter toward him?

A. Certainly.

Q. I hand you this memorandum and ask you to state whether or not your signature appears thereon? (Handing paper to witness.)

A. Yes, that lower one is mine.

Q. Margaret Hilkert? A. Yes.

Q. And the other signature on that, is that Mildred Hilkert? [95—82]

A. Yes, sir, it looks very much like it.

Q. Did you see her write it at the time?

A. I did.

Q. At the time you left Kelly's you agreed there was some indebtedness due to Mr. Kelly?

A. Mr. Kelly informed us there was.

Q. Did you and Miss Mildred Hilkert sign any memoranda as to the amount of such indebtedness?

A. We signed an undated I. O. U.

Q. I hand you this memorandum, marked for identification Defendants' Exhibit No. 1 as part of the cross-examination of the witness Margaret Hilkert Johnson, upon which as already stated the

(Testimony of Margaret Hilkert Johnson.)

signatures of yourself and Mrs. Bowles appear.

(Showing paper to witness.) A. Yes.

Mr. RAY.—We offer it in evidence as part of the cross-examination of this witness.

It is admitted, marked Defendants' Exhibit No. 1 and reads as follows:

Defendants' Exhibit No. 1.

“I O U \$227.51.

MILDRED HILKERT.

MARGARET HILKERT.”

Q. You stated that from about the first of October until you went to Valdez you had quite a few talks with Mr. Truitt as to the testimony you would give in this case? A. Yes.

Q. You know Mr. Truitt? A. Yes.

Q. And with Mr. Mossman?

A. Very few with Mr. Mossman. I think I had one conversation with Mr. Mossman when we left Kelly's and two since then, since we have been in the employ of the Government, to get money to live [96—83] on, when we went to Valdez. We had two conversations with him that time I think but since then have had very little conversation with Mr. Mossman, nothing regarding the case whatever.

Q. I don't suppose Kelly's name was mentioned?

A. Yes, it was.

Q. How long have you been in the employ of the Government?

A. I think we left Valdez on the 6th or 7th of the month.

(Testimony of Margaret Hilkert Johnson.)

Q. You simply mean that you are a witness—you don't mean you are in the employ of the Government? A. No.

Q. Are you getting daily wages from the Government?

A. I don't know whether we do or not,—we get witness fees.

Q. You get \$4.00 a day also?

A. Isn't that witness fees?

Q. How do you get them?

A. I haven't got them yet but I judge I will.

Q. Since the first day of October? A. No.

Q. Do you know a boy named Pat Van Curler?

A. I do.

Q. Now, I hand you three sheets of writing dated Valdez, Alaska, October 26, 1921, and ask you to state whether or not the same is in your handwriting?

A. Yes, it is, down to here (indicating).

Q. And that is in Mrs. Bowles' handwriting?

A. Yes.

Q. Mildred's? A. Yes.

Q. You wrote this letter to Pat? A. Yes.

[97—84]

Q. October 26, 1921? A. Yes.

Q. You recall what is in it? A. No, I do not.

Q. You may glance at it. (Handing witness letter.) You recall the letter? A. Yes, sir.

Mr. RAY.—We ask that this letter be marked for identification Defendants' Exhibit 2, 3 and 4 (three sheets). (It is so marked.)

Whereupon recess was taken until 2 P. M.

AFTERNOON SESSION.

Continuation of the cross-examination of MARGARET HILKERT JOHNSON by Mr. RAY.

Mr. RAY.—I now offer in evidence as part of the cross-examination of this witness the letter referred to before adjournment. The letter is admitted in evidence, marked Defendants' Exhibit 2, 3 and 4 and read to the jury by Mr. Ray as follows:

Defendants' Exhibit 2, 3, 4.

Valdez, Alaska, Oct. 26, '21.

Hello Irishman—

How are you, still scratching for a living or riding on the crest of the wave by now. We have been in a revolution since you left there. We had an awful blowup with Kelly and as you see we are at Valdez as a result of it. He shot off his mouth so much after we left that the U. S. men got ahold of it and started a thorough investigation. We were subpoenaed to appear in Valdez before the Grand Jury and if the indictment is granted, it means at least five years for Kelly. You see Pat they grab him under the Mann Act, he got us up there for the purpose of hustling and we knew it after about the first week. After you left it grew worse and worse. Kelly got to drinking and he was terrible. He kept Bennie so drunk he didn't know what was going on—he couldn't help us when we needed him—didn't even realize what had happened. So we are here under the protection of the court. If it were possible I'll bet Kelly would have gotten rid of us but before we

left Anchorage we had a body guard of four men from the police force. So we were protected at last. But we will be the ones [98—85] who send Kelly and his partner up if he goes. But, Pat, haven't *you* heard *Kelly* say things *to*, or, *in front of*, people that would give them the impression that we were hustling? That's what we want to prove. We can give a lot of evidence as to what he said to *us* but what we need now to fill out our testimony is the testimony of some other person as to Kelly's telling outsiders we were there for *Service*. They sent you a telegram, or rather, sent it to the Marshal, to question you, to see if you could give any examples of his conversation to men that gave them the idea that all they needed was the price and arrange it with Kelly. We told Judge Truitt that we thot perhaps you might have overheard something while you were down there mornings or when sitting there evenings. But I guess maybe they didn't go at it right and maybe you thot we were in bad. But if you can remember at *any time anywhere*, hearing Kelly tell any one we were there for that purpose, that we would arrange it for them to come to us for that purpose, or anything of such nature, for heaven's sake let us know and you will be subpoenaed and all mileage paid to and from where you are and four bucks per day. And if they don't get Kelly, we'd better buy seven league boots or our hides will be worthless.

We are fine and Jack is so large it's all we can do to lift him from the floor. He's so cute and

smart and he *is pretty*, you'd love him to death. We gave our cat away cause Jack was getting too big for him, he would hurt it in playing.

We do miss you, Pat, and if you were here now you'd sure have a job, building fires in the cold each morning. We are in a little house and of course it does grow cold by morning. And as we eat *once in a while* there are dishes to be washed so you would always have plenty to keep you busy.

Thursday, P. M.

Hello, Pat:

We are surely in the land of Santa Claus this morning for the snow is just fluttering down in a cloud and the ground is pure white. Jack is wild when he gets outside in the snow, he rolls and roots his nose in it and barks. He sure is cute and he weighs about thirty pounds and now he is getting so rough. His teeth are like needles but he'll soon be losing his baby teeth and the new ones wont be so sharp. I'll send you a bunch of pictures and you can use your own judgment as to whether they are good or not.

We kids have a pair of hightopped leather boots for hiking. We have taken three long hikes since we've been here—we were scared to hike anywhere up in Anchorage but we know we are safe here so we make the best of it.

We may stay here for a month or two or we may go out home on the Northwestern, it all depends on how soon Kelly's case comes up, the trial I mean, and if we get a job.

(Testimony of Margaret Hilkert Johnson.)

By the way Kelly should be arrested by now and unless he can provide bail he'll have to lay it out. You'll probably be called clear back here as a witness again. That wouldn't be so awful, would it?

There's not one thing in the way of news, Pat, and so I'll leave the rest of the page for Mildred to scratch a line.

Good luck, honey, and keep on struggling—you'll make good in no time.

Yours in snow,

PEG." [99—86]

Mr. RAY.—It is necessary that I ask one or two questions—

Q. Did you become a prostitute at Anchorage, Alaska, after August 3d. A. I did not.

Q. Did you give yourself up to debauchery at Anchorage or engage in immoral practices?

A. I did not.

Q. In reference to this I O U I was asking you about this morning—to whom was that given?

A. It was given to no one—it was given to us to sign and we signed it and that was the last we saw of it.

Q. Who gave it to you to sign?

A. Kelly gave us that slip of paper.

Q. Did you give it back to him?

A. It was left on the table—I signed that name and after that I didn't see it again, until you showed it to me this morning.

Q. Was any one else there?

A. Mildred was there.

(Testimony of Margaret Hilkert Johnson.)

Q. Mildred didn't take it away with her?

A. No.

Q. And you didn't take it away with you?

A. No.

Q. Kelly was there when you signed it?

A. He was there, yes.

Q. And you signed it? A. Yes.

Q. Do you remember the date that was?

A. No—I have forgotten.

Q. Did you talk anything about this case since the noon adjournment, with anyone, Mr. Duggan or Mr. McCain or Mr. Hurley? [100—87]

A. Not about the I O U.

Q. Did you talk about the testimony you gave here—have any discussion with the United States Attorney's office since the noon recess?

A. I don't think that has anything to do with the case.

Q. Did you have any conversation with the attorney's office or any member thereof since the adjournment, since you left the witness stand at twelve o'clock to-day?

A. Certainly, I had conversation.

Mr. RAY.—I think that is all.

The COURT.—Speaking of this I O U, which is marked Defendant's Exhibit 1—was this signed before or after you left Kelly's place?

A. It was left, after we quit working there.

The COURT.—I think it has been sufficiently identified as being the paper she signed at Kelly's request.

(Testimony of Margaret Hilkert Johnson.)

(By Mr. DUGGAN.)

Q. Counsel has asked you about your singing at church—are you a member of any church?

A. Yes, sir.

Q. What church? A. The Catholic.

Q. And is your sister? A. She is.

Q. Did Mr. Kelly or Mrs. Kelly pay you any money for your services?

A. We didn't receive a cent in payment, all the time we were there.

Q. How much, if any, money did you have when you left Kelly's? A. Between us we had 35¢.

Q. Now, in regard to this letter just read—did you write that [101—88] at the suggestion of anyone?

A. Judge Truitt suggested I write and ask Pat if he knew anything about this, saying perhaps he didn't understand the case and through some sense of gratitude to us and our friendship to him, he didn't care to make any statement to the marshal when questioned, and he told me it would be a good plan to write and tell Pat just what occurred and tell him if he knew anything to go and tell it.

Q. You made a statement, I believe, on the stand that you were employed by the Government, under cross-examination you stated you were in the employ of the Government? A. Yes.

Q. Did you mean that you were hired?

A. No—I didn't use the proper English there. I should have said I was subpoenaed and I received witness fees.

(Testimony of Margaret Hilkert Johnson.)

Q. Now, where is the man to whom this was written, who is he?

A. A personal friend of ours that we met in Spokane, a lad that was with the American Legion there in the hospital; he had been to France and was there for convalescence and recuperation and we met him while my sister was ill in that hospital.

Q. You had been acquainted with him before coming here? A. Yes.

Q. While you were at Kelly's was he there?

A. Yes, he was.

Q. Was that your reason for writing to ask what he knew about the case?

Mr. RAY.—We object to that.

Objection overruled; defendants except.

(By Mr. RAY.)

Mr. RAY.—I have another letter I want to call to the witness' [102—89] attention.

Q. I hand you a letter which I ask be marked Defendants' Exhibit No. 5 for identification (it is so marked) and ask you to state whether or not it is in your handwriting? A. It is.

Mr. RAY.—We offer the letter in evidence as a part of the cross-examination of this witness.

Mr. DUGGAN.—We object to it as immaterial.

The COURT.—The last part of the second page has some bearing on the case—that would be proper cross-examination. The jury will be instructed at this time that the only part of this which is admissible for any material purpose connected with

(Testimony of J. B. Beeson.)

this trial begins near the bottom of the second page, where I have marked a cross with a lead pencil.

The part of the letter admitted is marked Defendant's Exhibit 5 and read to the jury by Mr. Ray, as follows:

Defendants' Exhibit No. 5.

“Mildred says for you to go see Judge Truitt and tell him who you are. He's sure been fine to us and wants to see you about the trial. If you can ‘remember’ ever hearing Kelly say anything you tell him, see, for he needs one more witness besides us to substantiate our testimony. We want the state to win this case so we must all pull together.

How's Anchorage? Still a bad man's town? Is Kelly running full blast as before? etc.”

Witness excused. [103—90]

Testimony of J. B. Beeson, for the Government.

J. B. BEESON, a witness called and sworn in behalf of the Government, testified as follows:

Direct Examination by Mr. DUGGAN.

Q. What is your name? A. J. B. Beeson.

Q. What is your business or occupation?

A. Physician and surgeon.

Q. In Anchorage? A. Yes, sir.

Q. Did you ever meet Mildred Hilkert?

A. I have.

Q. Where? A. At Mr. Kelly's place.

Q. Can you fix the time, Doctor?

(Testimony of J. B. Beeson.)

A. Not according to calendar, but it was very shortly after she came to Anchorage?

Q. What was the occasion of your visiting her?

A. It was a professional call—to see her; she was sick.

Q. Where was she?

A. She was in her room on the second floor, over Kelly's pool-hall.

Q. Was she in bed? A. She was.

Q. Was she sick? A. She was.

Q. Who, if anyone else, was there?

A. The other Hilkert girl and a man who I think was a taxi driver.

Q. Was there anyone there intoxicated?

A. Not in that room.

Q. Elsewhere?

A. I saw a man that was intoxicated as I passed through the room below. [104—91]

Cross-examination by Mr. RAY.

Q. Was this man intoxicated before he went into the pool-room or afterwards?

A. I have no way of knowing.

(By Mr. DUGGAN.)

Q. What were the conditions there?

A. What do you mean by that?

Q. In the pool-hall?

A. It was pretty well crowded,—there were a good many people in the room; I paid very little attention to that. I was shown upstairs to see this girl who was sick—there was nothing disorderly as far as I knew.

(Testimony of Ed Larocque.)

Q. Was there no one else in the room except this taxi driver?

A. Nobody but her sister and this other man that I think was a taxi driver.

Mr. RAY.—Do you know who called you?

A. Mr. Kelly.

Witness excused. [105—92]

Testimony of Ed Larocque, for the Government.

ED LAROCQUE, a witness called and sworn in behalf of the Government, testified as follows:

Direct Examination by Mr. DUGGAN.

Q. State your name? A. Ed Larocque.

Q. You know Ragtime Kelly? A. Yes, sir.

Q. Do you know Mrs. Kelly?

A. I have seen her.

Q. Were you in Kelly's place on or about the Friday or Saturday before Labor Day?

A. I was there on the third of September; it was Saturday.

Q. Did you see either Margaret Hilkert or Mildred Hilkert there?

Mr. RAY.—We object to that on the ground that it is too remote to show by any possible means any intent charged in the indictment.

Objection overruled; defendants allowed an exception.

A. Yes, sir.

Q. Did you have any conversation with the defendant Kelly? A. I did.

(Testimony of Ed Larocque.)

Q. What did he say in regard to Margaret Hilbert or Mildred Hilbert?

Mr. RAY.—We object to that.

Objection overruled; defendants except.

A. I asked Kelly if there was anything doing with Peggy and he said, "Sure," and I said, "I wouldn't mind staying with her all night"; "Well," he said, "I can fix it for you if you want to."

Mr. RAY.—We object to that and move to strike the answer.

Objection overruled and motion denied; defendants allowed an exception.

Q. Did you then talk to Peggy? [106—93]

A. I spoke to her afterwards.

Mr. RAY.—Answer yes or no.

The WITNESS.—Yes.

Q. What was said?

Mr. RAY.—We object to that.

Objection sustained.

Mr. DUGGAN.—That is all.

Cross-examination by Mr. RAY.

Q. What do you do for a living?

A. Blacksmith.

Q. Where are you working?

A. I worked for the Alaska Engineering Commission at Camp 285.

Q. How long have you been in Alaska?

A. About, pretty near two years.

Q. Where did you come from—before you came to Alaska? A. Seattle.

(Testimony of Ed Larocque.)

Q. Who was the first person to whom you repeated the remark you say Kelly made on September third?

A. I haven't repeated it, only once that I know of.

Q. To whom? A. Mr. Duggan.

Q. When? A. When I was in Seward.

Q. When?

A. I don't remember the exact date.

Q. Were you working on September third?

A. No, sir.

Q. How long had you been in town?

A. I came in on Friday the second of September.

Q. And this was the next day? A. Yes.

[107—94]

Q. I don't presume you drink?

A. Certainly I drink.

Q. Were you drinking on the third day of September? A. Yes, sir.

Q. One or two drinks?

A. Several of them.

Q. Celebrating a little?

A. That was what I expected, came in for Labor Day.

Q. That is what you came in for? A. Yes, sir.

Q. How long had you been at 285, how long before your last relaxation?

A. Fourth of July.

Q. And on September third, Saturday, you came into Anchorage? A. The second.

(Testimony of Ed Larocque.)

Q. And on September third, Saturday, you had this conversation with Kelly? A. Yes, sir.

Q. Had you known Kelly?

A. I knew him, that is, I had been in his place lots of times.

Q. Had you visited these girls prior to September third? A. No.

Q. Had you been to their room? A. No, sir.

Q. You say the first man you spoke of this to was Mr. Duggan? A. Yes.

Q. At Seward? A. Yes.

Q. About what time was that?

A. I was working longshoring at that time—I don't remember exactly [108—95] what time it was.

Q. Was it last fall or this winter?

A. No, it was just this winter.

Q. How long before you came to Anchorage was this talk with Mr. Duggan?

A. I don't quite understand.

Q. How long before you came to Anchorage now did you talk to Mr. Duggan?

A. Why, I can't remember exactly but probably it might have been a week—it might have been less than that.

Q. When did you come to Anchorage?

A. Monday.

Q. This last Monday? A. A week ago.

Q. And how long before that did you talk to Mr. Duggan?

A. The day the boat was in, the "Victoria."

Q. About the seventh or eighth of February?

(Testimony of Ed Larocque.)

A. I don't remember the date.

Q. And was there anyone else you made the statement to? A. No.

Q. You haven't talked to these other men here, Mr. McCain or Mr. Hurley?

A. Mr. McCain was in the office but I didn't speak to him about it.

Q. And since your conversation with Mr. Duggan at Seward you haven't stated this testimony or made this statement?

A. No, I can't remember that I have before.

Q. Never discussed it with anyone?

A. No, sir.

Q. You now say that on September third this conversation took place? A. Yes, sir.

Q. Was there any friend with you down there at that time? [109—96]

A. Yes, I believe there was one.

Mr. DUGGAN.—From your own camp?

The WITNESS.—No.

Mr. DUGGAN.—The time has not been fixed.

Mr. RAY.—September third.

Q. Did you have a conversation with your friend on that day?

A. Why, I suppose I must have been talking to him.

Q. What did you talk about?

A. I can't remember exactly—we talked about most anything, like two friends.

Q. Do you remember any particular conversation? A. No.

(Testimony of Ed Larocque.)

Q. You say this conversation of Kelly's has not been called to your attention since, since you saw Mr. Duggan in Seward?

A. Well, I can't remember.

Q. Did anyone ask you if you had any conversation with Mr. Kelly on the third day of September?

A. No.

Q. You just went to Mr. Duggan and told him you had this conversation? A. Yes, sir.

Q. That's it, is it? Mr. Duggan didn't ask you?

A. This friend of mine, he asked me if I would come up.

Q. Who is this friend?

A. Who do you mean?

Q. Who is this friend of yours?

A. Mr. McNamara.

Q. Mr. McNamara told you if you were a witness in the case you could get a good bunch of money out of it? A. No.

Q. Did you tell McNamara you didn't know anything about the case? [110—97]

A. He knew I was in Kelly's place at that time.

Q. Did you say to him you didn't know anything about the case? A. No, I didn't say that.

Q. Did you say you didn't want to be a witness?

A. I don't like to be a witness.

Q. And didn't McNamara tell you you would get your mileage and Four dollars a day? A. No.

Q. Did McNamara tell you he could fix up a story for you to tell? A. No, sir.

Q. Were you ever in Valdez with McNamara too?

A. No.

(Testimony of Ed Larocque.)

Q. How long were you in Seward?

A. I left Anchorage in November—up until the time I left to come back.

Q. You were over in Seward all that time?

A. Yes, except one day I went to Resurrection River and went trapping for a while.

Q. Did you see McNamara when he came back through Seward from Valdez?

A. I seen him as he was getting off the boat.

Q. And have a talk with him there?

A. No, I didn't have much time because I was going down to look for a job.

Q. And did you see McNamara in Seward just before the first of the year? A. No, sir.

Q. Then you saw Mr. Duggan about the 7th or 8th of February when the "Victoria" arrived and Mr. Duggan got off the boat?

A. It was the "Victoria" came in.

Q. And were you served with a subpoena by the marshal? [111—98] A. Yes.

Q. On that day? A. No.

Q. When?

A. It was Saturday—the train left Monday.

Q. Now, have you seen Mr. McNamara since you have been in Anchorage?

A. I have been with him several times.

Q. And I don't presume you discussed this case at all? A. No, not to amount to anything.

Q. When did you quit your employment at Mile 285?

A. It must have been the last part of August some time.

(Testimony of Ed Larocque.)

Q. Did you work after you came in from your Labor Day celebration?

A. I worked longshoring and blacksmith-shop.

Q. You mean in Anchorage? A. Yes, sir.

Q. How much work have you done since, say, Labor Day?

A. I couldn't tell you exactly the amount of work I done—whenever there was work for me to do I did it.

Q. You got employment when you could?

A. Yes.

Q. How many conversations did you have with McNamara about this case?

A. I don't remember.

Q. You talked over the matter quite a little, didn't you? A. No, sir.

Q. Did you have more than one or two conversations? A. We might have had.

Q. Do you remember how many conversations you had? A. No, sir, not exactly.

Q. You can remember the exact language that was used on the third of September, but you don't know how many conversations you had with this man? A. Certainly.

Witness excused.

Government rests. [112—99]

DEFENSE.

Testimony of Frank Kelly, for Defendants.

FRANK KELLY, one of the defendants, sworn as a witness in his own behalf and in behalf of his codefendant Grace Kelly, testified as follows:

Direct Examination by Mr. COFFEY.

Q. State your name? A. Frank Kelly.

Q. You are known as Ragtime Kelly?

A. Yes, sir.

Q. You are a resident here of Anchorage?

A. Yes, sir.

Q. How long have you been in Anchorage?

A. I came here the 25th of January, about the 25th of January, with my show.

Q. 1921. A. Yes.

Q. How long have you been in Alaska?

A. Off and on for twenty-four years.

Q. Where was your first appearance in Alaska?

A. In Dawson City, 1898 and 99.

Q. What business were you engaged in there?

A. Theatrical business.

Q. How long were you in Dawson?

A. I went in there and stayed in there about a year; in the spring of 1900 I left for the Koyukuk on the steamboat and was about a year in the Koyukuk and then went to Nome.

Q. How long were you at Nome?

A. I landed in Nome, I think, it was the 6th or 7th, a few days after the 4th of July, and came out that fall, I think it was the very last of September or first of October, on the "Oregon."

(Testimony of Frank Kelly.)

Q. During the time of your residence in Alaska have you always [113—100] been engaged in the theatrical business?

A. In the Koyukuk I did a little prospecting; there was no theatrical business there and I went out prospecting on the Koyukuk.

Q. But generally during your residence in Alaska, what business have you been engaged in?

A. Theatrical business.

Q. Always in the theatrical business?

A. Always, all my life.

Q. You came here in January, 1921?

A. Yes. We opened at Ketchikan.

Q. What towns did your route include?

A. Ketchikan, Juneau, Seward, Cordovia, Anchorage, Eska and Chickaloon.

Q. Are you married? A. Yes, sir.

Q. How long have you been married?

A. Going on 20 years.

Q. Your codefendant, Mrs. Grace Kelly, is your wife? A. Yes.

Q. You have heard the testimony of the witnesses here that have been brought in by the Government—I will take up one or two of the matters brought out in their testimony: When you came here as a result of your tour along the coast, did you open up a pool-hall here in Anchorage?

A. Yes, sir.

Q. Where? A. At Robarts pool-hall.

Q. That is located on Fourth Avenue between F and G, City of Anchorage? A. Yes, sir.

[114—101]

(Testimony of Frank Kelly.)

Q. Now, describe to the jury and Court that pool-hall so far as the downstairs arrangement is concerned?

A. Downstairs there is six pool-tables and a billiard-table.

Q. How long a building is it?

A. 140 feet long by 50 feet wide.

Q. You say there are six pool-tables?

A. Downstairs there are six pool-tables and one billiard-table; there are two bowling-alleys and there is a counter in the front and lined up with cigars and tobacco and cigarettes, and a back counter also with cigarettes.

Q. What part of the hall did the pool-tables occupy? A. They occupy the main floor.

Q. Is it on the right side of the main floor or the left side?

A. On the right side as you go in.

Q. And the left side—what is there?

A. That is the bowling-alley.

Q. That occupies about half?

A. No, the pool-tables occupy about two-thirds.

Q. How long were you engaged in the pool-hall business there before opening up a cabaret?

A. Took it about the first of March and it was about the first of August I got the idea of putting in a cabaret—I wouldn't swear positively when the idea first came to my head.

Q. Approximately, then, you were engaged in the pool-hall business about six months and went into the cabaret business about the first of August?

(Testimony of Frank Kelly.)

A. No, the cabaret didn't start, I don't think, on the first of August; the cabaret started around the fifteenth to the 20th of August.

Q. Now, in starting in the cabaret business, Mr. Kelly, did you consult any attorney here in the city regarding your rights [115—102] in the matter? A. I certainly did.

Q. Did you act upon that advice?

A. Absolutely on his advice.

Q. Was that advice of such a character as led you to believe you had a perfect right to enter into the cabaret business? A. Absolutely.

Q. And you entered into this cabaret business on that advice? A. Yes, sir.

Q. Now, along about the first or second of August, 1921, did you wire out to Seattle for two young ladies to come up here and to act as entertainers? A. Yes, sir.

Q. What were the names of those two young ladies?

A. Margaret Hilkert—there was some little controversy about her name—Margaret Hilkert and Mildred Hilkert.

Q. How did you know these two girls?

A. A gentleman by the name of Fred Waller—I had spoken about, had figured on a cabaret entertainment for the public, as there was nothing but moving pictures here, and I told him I thought it would be a good idea, as the people had no entertainment but pictures and he told me of a couple of friends of his in Seattle that were entertainers.

(Testimony of Frank Kelly.)

I told Fred, "It is just a little too early yet to bring them up here."

Q. Did he mention their names?

A. I think he did; I wouldn't swear positively.

Q. Were these the two young ladies you wired for? A. Yes, sir.

Q. Now, you have been engaged practically all your life in the theatrical business—is it customary, from your experience [116—103] as a theatrical man, is it customary to guarantee transportation expenses to prospective entertainers, with the understanding that they will return their transportation during the course of their entertainment?

Objected to as leading.

Mr. COFFEY.—I will change the form of that question.

Q. When you wired for these two Hilkert girls, did you so frame your wire that upon their accepting the terms of the contract of employment with you as entertainers, that they would return to you the amount of the fare advanced?

Mr. DUGGAN.—We object as calling for secondary evidence and not the best evidence.

Q. I now hand you Plaintiff's Exhibit "N" and ask you if you identify it? A. Yes, sir.

Q. Did you send that telegram?

A. I sent that myself.

Q. "Fred Waller just arrived in Anchorage and spoke to me about you and your sister wanting to come to Anchorage. Let me know at once your lowest salary for you and your sister per week to

(Testimony of Frank Kelly.)

work for me you play the piano and sing and sister help you also Will advance your transportation and you both pay five dollars per week till transportation is paid out. Answer quick Fall and winter engagement." Did you send that telegram? A. I sent that myself.

Q. You sent that telegram?

A. The one you showed me? Yes.

Q. The one I just read? A. Yes.

Q. Upon the arrival here of these two young ladies, the Misses [117—104] Hilkert, did they proceed to fulfil their contract here to entertain in your pool-hall? Did they start to work as soon as they came here? A. The day after.

Q. Did you ever have any occasion to remonstrate with them regarding the character of their work, while they were employed with you?

A. Several occasions.

Q. Now, just state to the Court and jury the occasion of your first dispute with these young ladies and what led up to it.

The COURT.—I don't want to restrict you—you may ask when any dispute first arose regarding the manner of doing their work.

Q. Relate to the Court and jury any objectionable features regarding the work of these young ladies while in your employ.

A. The first time was about the third night they were there; it happened, as close as I can remember, around 9:30 or 10 in the evening. The big girl they called Mildred was in the corner, off the stand where the piano was, and was down on the further

(Testimony of Frank Kelly.)

left corner of the pool-hall—that was about 20 feet away from the piano, and she was dancing in a way that didn't appeal to me or would appeal to the customers that came into the place that were gentlemen. I called her aside and told her, "Mildred, I wouldn't do that, it just keeps people wanting to go and dance with you and you are not here to dance; you are here to sing and entertain," and she said to me, "What the hell are we in here, a church?" and I said "No, not exactly that, but I don't think it looks proper and you are just engaged to sing and entertain and that is all." She muttered under her breath and said, "Go to hell," and walked away.

Q. Was there anybody else there at this time overheard that conversation? [118—105]

A. Yes, there was another gentleman there.

Q. Who was it? A. His name is Miller.

Q. Ben B. Miller? A. Yes, sir.

Q. What was the next dispute you had with these young ladies?

A. The next dispute I had with them was—the little one had a continual habit—

Q. Whom do you refer to as the little one?

A. Peggy; she had a continual habit of always running upstairs, all the time, and staying up there 15 or 20 minutes at a time, and I spoke to her a couple of times about it, and she seemed to be very up-ish—

Mr. DUGGAN.—We want the conversation—what was said.

(Testimony of Frank Kelly.)

The WITNESS.—(Continuing.) She would continually run upstairs, every evening and stay up there 15 or 20 minutes at a time, instead of being down on the piano stand—in fact, I told her it would be best to stay on the piano stand all the time and that would stop encouraging people from wanting to go over to the piano stand and leave them alone, and she was a little inclined to be a little up-ish about it and didn't agree with me about it, and I didn't argue with the girl at all about the question except those statements that I made to her.

Q. When was the next dispute, if any?

A. The next dispute was the time about the clothes.

Q. What was that?

A. Well, they said they were going to quit and the big one was up there in the room. They called me up and Mildred said she couldn't stand the climate, that it was affecting her lungs and she did continually have a cold, all the time she was there, from the first day, and she said she was expecting [119—106] some money from Seattle, I am not positive but I think it was \$100, and she said she and her sister were going to leave, and I said, "When do you expect this money?" and she said, "I am not sure whether I will get it or not," and I said, "Did you wire for it and do you want to go back to Seattle, you and your sister?" and she said, "Yes," and I said "I will tell you what I will do, Mildred; let me know the steamer you want

(Testimony of Frank Kelly.)

to go on and I will get you and your sister a ticket and you don't have to depend on the \$100 whether it comes or not," and she hemmed and hawed a little and said, "We have kinder engaged a cabin and are going to live there and are not sure whether we will go out or not," and I said, "If you want to go, let me know and everything will be fixed. I will get you the tickets"; and I think it was the following day the expressman came to get the trunk and started upstairs, and I stopped him and said, "What are you going up there for?" and he said, "To get a trunk." I said, "Whose trunk?" and he said, "The two girls that work here," and I went upstairs and asked the girls if they were taking the trunks out and they said, "Yes," and I asked them if they had left the dresses, and they said, "No," they wanted the dresses, and I said they couldn't take them and they said they would go to Mr. Mossman and get them, and I told them to see Mossman and they went over there. A short while after that the phone rang and Mossman called me over and asked what the difficulty was and I said I didn't believe that there was any, that the girls had some dresses in the trunk that belong to my wife and I and they were taking them out. The girls said the dresses belonged to them and started to argue and if I am not mistaken, I think Mossman said, while I can't recall it exactly, that the only way to do was to see a couple of lawyers [120—107] to find out about the dresses.

(Testimony of Frank Kelly.)

Q. Now, in regard to those dresses—did you purchase those dresses with your own money?

A. My wife and I.

Q. That is, money taken from the Kelly pool-room was used to pay for those dresses?

A. Yes, sir.

Q. When they arrived there, the first night, previous to going to work, did you ask them regarding their clothes, whether or not they had clothes suitable for such an entertainment?

A. Yes, sir—and they said they had some dresses but they were not sure whether they would do or not.

Q. You heard the testimony of one of the young ladies, I think it was Peggy, that her trunks had arrived—how many trunks did she have?

A. I think there was only one.

Q. How big a trunk was it?

A. It was one of the small flat trunks.

Q. A steamer trunk? A. A steamer trunk.

Q. And upon learning that the clothes were not suitable for the kind of entertainment they were to give there, the cabaret, what did you do?

A. Well, I came downstairs and told my wife that I didn't think the dresses they had were bright enough to appear on the platform, to entertain.

Q. Did they say anything concerning the character of those dresses?

A. They mentioned the fact that they didn't think they would be good enough to wear.

Q. What did you do?

(Testimony of Frank Kelly.)

A. My wife said she would go up and look at the clothes. [121—108]

Q. Did she? A. Yes, sir.

Q. Then what became of the dispute with the Marshal's office regarding the disposition of the clothes?

A. A fellow named Jew Bob came in to my place that night and he said, "Kelly," he said, "do those girls owe you anything?"

Mr. DUGGAN.—We object to that—since we were not permitted to detail any transaction not in the presence of the defendants, we contend that any transaction with Jew Bob is not material in this case.

Objection sustained.

Q. Did you release the clothes or trunk?

A. Yes, sir.

Q. What became of the clothes or trunk?

A. They took the trunk with them.

Q. These young ladies? A. Yes, sir.

Q. You gave the clothes over to them?

A. Yes, sir.

Q. And they haven't been in your possession since? A. No, sir.

Q. During the time of their employment with you did you or Mrs. Kelly pay any money to them for services?

A. That I ain't positive about, just how much we did pay them, because after the third night they were there and after some reports I heard of

(Testimony of Frank Kelly.)

them downtown, after three o'clock in the morning—

Mr. MURPHY.—Never mind that.

The WITNESS.—I think my wife would know more about that than I would.

Q. You heard Miss Mildred Hilkert, the older of the two—you heard [122—109] her testify yesterday or the day before, regarding an incident that occurred at three o'clock in the morning, one hour after the young ladies testified they had quit for the evening, when they made an arrangement to go to Lake Spenard, and she testified it was dark?

Mr. DUGGAN.—We object to that, as leading and misstating the evidence.

Q. Well, at that hour of the morning, when she testified it was dark, was it dark?

A. Three o'clock in the morning?

Q. Yes—about the middle of August, 1921.

A. I wouldn't exactly call it dark.

Q. What would you call it?

A. I would call it light.

Q. Do you know a man by the name of Larocque, who testified here that he had a conversation with you regarding one of the young ladies?

A. Never in my life have I seen him.

Q. Was he ever in your place of business that you remember?

A. Never in my life do I remember seeing that man before.

(Testimony of Frank Kelly.)

Q. Did you have the conversation that he stated occurred between you and him?

A. Before my Almighty God, no.

Q. Your place is a public place, people of all kinds and characters come in there and frequent the place? A. Yes, sir.

Q. Is it customary for you to stand at your door at your place of business and inquire as to the character and habits of people that enter your place? A. No, sir.

Q. Now, Mr. Kelly, during the time of your entrance into this business [123—110] in March, up to and including the 5th day of September of that year, tell the jury and the Court the kind of place you were running there and the kind of people that frequented that place? The kind of people that frequented your place of business?

A. Well, I was running the pool-room and the bowling-alleys and the people that frequented the place I might say is people from all walks of life, the people of the town, business men a great deal.

Q. Did you ever hold any pool or billiard tournaments there?

A. We held a billiard tournament there and a bowling tournament.

Q. And people of various walks in life frequented that tournament? A. Yes, sir.

Q. Business men of the town?

A. Yes, more so than hardly anybody else, business men more than anybody else came to my place.

(Testimony of Frank Kelly.)

Q. Mr. Kelly, did you ever employ Miss Margaret Hilkert and Miss Mildred Hilkert, either or both of these young ladies, to come to Alaska for the purpose of indulging in the practice of prostitution or for the purpose of enticing them into a life of debauchery? A. How is that?

Q. Did you ever employ either or both Miss Mildred or Miss Margaret Hilkert to come to Alaska for the purpose of indulging in prostitution or the practices of debauchery? A. Certainly not.

Q. Or for any other immoral purpose?

A. No, sir.

Q. Did you ever furnish either or both of these young ladies with transportation from Seattle to place them in the position where they would become prostitutes? [124—111] A. No.

Q. Or might become immoral? A. No.

Q. Or might debauch themselves?

A. Certainly not.

Q. What was your purpose in employing the young ladies?

A. My main purpose in employing them was to give entertainment to the people of Anchorage, as there was no entertainment outside the moving pictures and I knew from being in the show business all my life and seeing none here that the people were hungry for some entertainment and that was my object in bringing them here.

Q. Were you in your pool-room shortly after the arrival of these young ladies when a young man by the name of Mickey O'Shea used some blas-

(Testimony of Frank Kelly.)

phemous language and your wife slapped him in the face?

Mr. DUGGAN.—We object to that as leading and suggestive and an attempt to state something not in the evidence.

The COURT.—I will sustain the objection as being leading and suggestive.

Mr. MURPHY.—I will withdraw the question.

Q. Were you present with Mrs Kelly and a person named Mickey O'Shea when an incident occurred in the pool-room? A. Yes, sir.

Q. What was the incident?

Mr. DUGGAN.—We object on the ground that it does not fix the time.

Q. Within a few day after the arrival of the young Misses Hilkert. Describe what that incident was?

A. I didn't quite hear what Mickey had said,—I was up at the other end of the counter and my wife was down at the end as you come [125—113] in and she slapped Mickey and I went down there and I asked her what was the trouble and she said that Mickey had used some language and I told him never to repeat language again in the place like that, and I said, "What did Mickey say?" and she said, "He apologized."

Q. Anything else?

A. That is all, I think of that.

Q. Do you know a man named McNamara?

A. Yes, sir.

Q. What are his initials, do you know?

(Testimony of Frank Kelly.)

A. I just know him by McNamara, that is all.

Q. Did you meet McNamara in Valdez?

A. Yes, sir.

Q. Did Mr. McNamara ever have a conversation with you regarding this case, in which the Government has charged you with being a white slaver?

A. Yes, sir.

Q. What was that conversation?

Mr. DUGGAN.—We object to that as incompetent, irrelevant and immaterial.

Q. Did McNamara ever state to you that for a consideration, financial consideration—

Mr. DUGGAN.—We object to any further statement of a question of this character, for the reason that Mr. McNamara is in nowise concerned in this case.

The COURT.—The objection will be sustained. So far as it appears from any evidence offered by the Government, Mr. McNamara does not represent the Government in any way at all and has not been employed by the Government. If McNamara were a Government agent, it would be different. The only way that Mr. McNamara gets into the case is through the cross-examination [126—113] of Mr. Larocque. Defendants will be allowed an exception.

Q. Mr. Kelly, did you lease, or what disposition did you make of the dance-hall upstairs, if any?

A. Why, we leased that out to some parties.

Q. To whom?

(Testimony of Frank Kelly.)

A. His name is—I can't think of it now; it is on the lease there.

Q. Was it to a William S. Elliott you leased it?

A. Yes, sir.

Q. I show you this paper and ask you if that is your signature and the signature as far as you know of William S. Elliott? A. Yes, sir.

Mr. COFFEY.—We offer this lease in evidence.

Mr. DUGGAN.—The offer is objected to for the reason that as far as it appears, it is not material to any issue or question in this case.

After argument—

By the COURT.—I think it is admissible but the weight of it will be for the jury. I believe the jury can give it such weight as it is entitled to, and it may possibly go to the intent.

Mr. RAY.—That is the only purpose for which it is offered.

The lease is admitted in evidence, marked Defendants' Exhibit No. 6 and read to the Jury by Mr. Coffey as follows:

Defendants' Exhibit No. 6.

“This agreement made this 3d day of August, 1921, between Frank Kelly, first party, and William S. Elliott, second party,

WITNESSETH: That first party leases to second party the use of Robarts Hall, now in possession of first party, for Saturday nights only, for the sum of Fifteen Dollars for each Sat-

urday night until the 1st day of February, 1922, from date.

It is agreed that one month's rental, being for the Saturday nights during January, 1922, shall be paid in advance, receipt whereof is hereby acknowledged.

It is further agreed that first party shall heat said building on said Saturday nights, furnish the light therefor and sweep the floors on said hall.

It is further agreed that should a general holiday fall upon any Saturday night during the term of this contract this agreement shall not apply to said night, and the right of second party to [127—114] the use of said hall upon such night shall depend upon a special agreement between the parties hereto.

It is further agreed that such hall shall be used for respectable dances and entertainments only.

FRANK RAGTIME KELLY.

WM. S. ELLIOTT.

Territory of Alaska,
City of Anchorage,—ss.

This is to certify that on this 3d day of August, 1921, before me, a Notary Public for the Territory of Alaska, personally appeared Frank Kelly and William S. Elliott, to me personally known to be the parties who signed and executed the above and foregoing contract, and each for himself and not one for the other acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

(Testimony of Frank Kelly.)

Given under my hand and notarial seal this 3d day of August, 1921.

SHERMAN DUGGAN,
Notary Public for Alaska.

My commission expires 10-31-1923.”

Q. You entered into that lease, did you?

A. Yes, sir.

Q. It was signed by you and by Mr. William S. Elliott?

A. Yes, sir.

Q. Did Mr. Elliott ever make any complaint to you during the course of these Saturday evening dances regarding the Misses Hilkert, Miss Mildred and Miss Margaret?

A. Yes, sir.

Q. What was the nature of that complaint?

A. He told me one Saturday night that he saw one of the girls—the dance-hall is on the same floor as their apartments, and he said he saw one of the girls bringing men from the dance-hall floor and sitting down in their room and it didn't look nice.

Mr. DUGGAN.—We object to that and move to strike the answer.

The COURT.—The objection will be sustained and motion granted—you can bring Mr. Elliott in to testify to that. [128—115]

Defendants allowed an exception to the ruling.

Q. There was a complaint made by Mr. Elliott?

A. Yes, sir.

Mr. DUGGAN.—We make the same objection and motion.

Mr. RAY.—We think we have a right to show

(Testimony of Frank Kelly.)

what action, if any, was taken by Mr. Kelly in reply to this complaint.

The COURT.—This is purely hearsay. Mr. Elliott can be heard. It is permissible for the witness to state what caused him to do certain things but you are now asking him to say what somebody else told him.

Mr. COFFEY.—I will ask this question—

Q. Were any complaints made by Mr. William S. Elliott, the lessee of this dance-hall in the upper floor of your pool-room building? A. Yes, sir.

Q. How many entrances are there to your place on Fourth Avenue? A. To the pool-room itself?

Q. No, to your whole place? A. Two.

Q. Describe those entrances.

A. Well, into the pool-room there is a big double door and into the apartments upstairs there is a door, about this size (indicating a door in the court-room).

Q. What is the condition of that door as to being locked or unlocked? A. We keep it locked.

Q. Always? A. Yes, sir.

Q. How big a floor is the dance-hall upstairs?

A. I am not sure—I think it would be about 50 by 80.

Q. Eighty feet in length? [129—116]

A. Yes, sir.

Q. That would mean that there would be a distance of 80 feet between the apartments on the north end of the building to your living quarters on the south end?

(Testimony of Frank Kelly.)

A. There would be more than that—I am speaking of the dance-hall proper.

Q. What would be the distance between the two apartments on the north to the south end?

A. There would be a distance between the doors of 120 feet.

Q. How many apartments are there in the north end of the building on the Fourth Street end?

A. On the Fourth Street end there is one apartment—there is an apartment of a room, a kitchen, pantry and then a side room.

Q. How many rooms are there up there?

A. There would be three rooms.

Q. Do you know Mr. Ben B. Miller?

A. Yes, sir.

Q. Was he in your employ during the month of August and the early part of September, 1921, or approximately during that time?

A. I can't say whether he was; he was in there quite a lot playing billiards and pool. He is very fond of billiards and pool.

Q. Now just tell the jury and Court what kind of rooms they were on the Fourth Street end of the building.

A. The front part of the building, there is a big room, you would call it a living-room, and leading off of that is a little kitchen with cooking utensils and stove and sink in it. Off the big living-room in that direction (indicating) is another room.

Q. Did you employ a janitor? A. Yes, sir.

Q. Where did he live in the building?

A. In a small room.

(Testimony of Frank Kelly.)

Q. In the front part of the building? [130—117]

A. Yes, sir.

Q. Did I understand you to say that there were one or two rooms up there in the front part?

A. There is three rooms altogether in the front.

Q. Now, just give the jury an idea as to the furniture of the main room there, the big room you spoke of.

A. There is a big dining-table and there is what you would call a dresser and about four chairs and one bed.

Q. What kind of a bed, single or double?

A. One double bed.

Q. What kind of a stove, if any, in the little kitchen? A. A regular range.

Q. Was that room fixed up for housekeeping?

A. Yes, sir.

Q. Your apartments on the other end of the building were approximately how far away?

A. About 120 feet—it would be about 120 feet from the front door back to our house.

Q. How were your apartments arranged back there?

A. My wife and I have a dining-room, a bedroom, a bathroom and a stove.

Q. Was your place such a place as would permit of the frequent visitation by dissolute characters, drunken people, disorderly unmoral people?

Mr. DUGGAN.—We object to that as calling for a conclusion.

The COURT.—The objection will be sustained; he can describe the building.

(Testimony of Frank Kelly.)

Q. Were there any cribs upstairs in your place, Mr. Kelly—do you know what is meant by a crib?

A. Yes.

Q. Any such place as that upstairs? [131—118]

A. No.

Q. Was it so arranged that there could be promiscuous meeting on the part of male and female up there?

A. Never allowed a soul to go up there.

Q. Did you ever observe men going upstairs to visit these rooms?

A. The only party that I ever saw was a man by the name of Jack Williams and when he came down I called him and fired the drummer for going up there one night.

Q. It wasn't customary for you to see men frequenting the rooms upstairs going back and forth—you didn't see them?

A. No, I never allowed any.

Mr. COFFEY.—That is all just now.

Cross-examination by Mr. DUGGAN.

Q. You spoke of consulting an attorney about your cabaret? A. Yes, sir.

Q. Who was that attorney?

Mr. RAY.—We object to the question.

The COURT.—In questioning one juror you mentioned Mr. Duggan's name, before the trial began, but leaving that out of it, the question was asked a while ago if they did employ an attorney. The objection will be overruled and exception allowed.

(Testimony of Frank Kelly.)

A. Yourself, Mr. Duggan.

Q. When was that?

A. That was around the time of the Girdwood excitement, when I was getting out those powers of attorney.

Q. Fix the date—was it before August 20th?

A. Oh, yes, quite a while.

Q. Before the 20th of August? A. Yes, sir.

Q. How long before? [132—119]

A. If we can trace the Girdwood excitement we have it. I don't know the date.

Q. Did you not state on direct examination a moment ago that you first conceived the idea of the cabaret about the 20th of August?

A. No, I said this—I said that it was around the first of August; I was asked about that and said it was around the first I was bringing somebody up—it wasn't the first time I conceived the idea of starting the cabaret; I conceived that idea when I was in the house only three months—I figured it was quiet in the summer, and the cabaret would run in the fall, when the people were in town,—that would be the time to run the cabaret as the people would be looking for amusement.

Q. Did you ever consult me regarding the white slave law? A. No, I did not.

Q. As a matter of fact, Mr. Kelly, you never consulted me about the cabaret, did you?

A. Mr. Duggan, I beg your pardon—

Mr. RAY.—We object; a confidential communication between attorney and client cannot be introduced in this manner.

The COURT.—A defendant is always, within reasonable limits, permitted to testify as to the motives that moved him, and Mr. Kelly is within reasonable limits permitted to tell the motives that governed him. He was entitled to say and indicate by the evidence that he did consult an attorney and that he did not want to do anything that would violate the law.

Mr. DUGGAN.—It seems to us when he testified that he received legal advice upon a proposition and that he acted upon it, or at least that was the inference from the statement, that opens up the matter. There is nothing to show what kind of counsel he got—we contend that after he has taken the position that [133—120] he acted upon advice of counsel, that we can show what kind of advice he got. I will ask this question for the purpose of a ruling, if I will be permitted to take the stand on rebuttal and testify—

The COURT.—I will take this question under advisement and you may recall Mr. Kelly to-morrow. I think the rule is when a client testifies to a conversation he has had with an attorney, asking his advice, that he removes the secrecy—it no longer becomes a confidential communication and he waives the right to claim it was a confidential communication, but as to how far that goes, I would like to look the matter up. We will reserve this matter until to-morrow and you may proceed with other matters, Mr. Duggan.

Q. Were you convicted of violating the bone dry law?

(Testimony of Mrs. Grace Kelly.)

Mr. RAY.—We object to that and ask that the jury be instructed that where a man is convicted in the Justice's Court and appeals that it stands as no conviction.

The COURT.—The objection will be sustained if it refers to a conviction in the Justice's Court that is pending on appeal—the appeal vacates the judgment.

Mr. DUGGAN.—We ask for an exception.

Government allowed an exception.

Mr. DUGGAN.—That is all.

Mr. RAY.—It is understood we can recall Mr. Kelly in the morning?

The COURT.—Yes, sir.

Witness excused. [134—121]

Testimony of Mrs. Grace Kelly, for Defendants.

MRS. GRACE KELLY, one of the defendants, called and sworn as a witness in her own behalf and in behalf of her codefendant Frank Kelly, testified as follows:

Direct Examination by Mr. COFFEY.

Q. What is your name? A. Grace Kelly.

Q. You are the wife of Frank Kelly, known as Ragtime Kelly? A. Yes, sir.

Q. How long have you been married, Mrs. Kelly?

A. Twenty years, the 14th of March.

Q. During the period of your married life what business have you been engaged in?

A. Theatrical business.

Q. What kind of theatrical business?

(Testimony of Mrs. Grace Kelly.)

A. Vaudeville and musical comedy.

Q. When did you first come to Alaska?

A. Around Christmas-time, the week of Christmas, we landed in Ketchikan.

Q. Where did you go from there?

A. Juneau.

Q. And from there along the coast?

A. Yes, sir.

Q. What time did you arrive in Anchorage?

A. It was about the middle of January, 1921.

Q. And you have remained in Anchorage since January, 1921?

A. Yes, with the exception of one time I went out, last fall.

Q. You have been engaged with Frank Kelly in the operation of the Kelly pool-rooms located on Fourth Avenue in this city? A. Yes, sir.

Q. What were your duties there, what did you do?

A. Aside from my housework, I helped with all the duties that were [135—122] necessary.

Q. You lived on the premises? A. Yes, sir.

Q. Where?

A. In our apartment, in the back of the building, upstairs—at the rear end of the dance hall.

Q. Would your duties call you to assist in the downstairs part of the building such as the pool-room and the bar?

A. Yes, sir. I waited on the counter; when there was no one there I took care of the pool-tables.

(Testimony of Mrs. Grace Kelly.)

Q. So you were there practically all the day and evening? A. At all times.

Q. At all times in the building? A. Yes, sir.

Q. Do you know the Misses Hilkert?

A. Yes, sir.

Q. Were they employed at your place during the month of August and the early part of September, 1921. A. Yes, sir.

Q. What were their duties?

A. They were employed as entertainers.

Q. When did they start their employment there?

A. They went to work the 20th of August, 1921.

Q. What was the nature of their entertainment?

A. They were supposed to sing and play the piano.

Q. And they did that? A. Yes, sir.

Q. Now, on their arrival here about the middle of August, did you have occasion to have a talk with them concerning their wardrobe?

A. Yes, sir.

Q. State what that was. [136—123]

A. The morning after their arrival, the matter of their wardrobe came up. Mr. Kelly spoke to them first about it and asked them what they had to wear, and I don't know just what his conversation with them was, but he told me to go up and look at the girls' dresses, which I did. I went up and found two organdie dresses and the girls, we all three, agreed that they were not suitable for them to wear, and I told them it would be a good idea for them to go downtown and try to find something and as to the matter of payment, we

(Testimony of Mrs. Grace Kelly.)

would look after that; and they went down and said they couldn't find anything,—they didn't know what to get. They came back and I said, "I will go with you," which I did—I went down to Miss O'Bryan's and decided on a dress there for Mildred.

Q. What kind of a dress was that?

A. It was a black dress, entirely black, low neck, short sleeves,—in fact, a regular evening gown.

Q. Was it an extreme dress?

A. Not at all—it was just an evening gown.

Q. Did they purchase that dress?

A. I bought that dress and paid cash for it at the time—besides that I bought two pair of slippers for each, there.

Q. What did you do then?

A. After that we went to Dougherty's.

Q. You couldn't find anything for the younger girl at Miss O'Bryan's?

A. No, there was nothing there we thought was suitable, and we went to Dougherty's from there and looked over some gowns and found one, light green in color, that they thought was very pretty. Peggy liked it very much—I mean the one called Margaret—and we finally decided on that. It had to be altered a little which was done that afternoon, so she could wear it [137—124] that evening, as they were to open their engagement that evening; besides that I believe they got some hosiery for that evening.

Q. Were any other materials purchased for them any other place? A. No.

(Testimony of Mrs. Grace Kelly.)

Q. They didn't visit any other stores in town?

A. Not then.

Q. Did they later, for the purpose of purchasing dresses?

A. Well, they went down to Mrs. Ashton's.

Q. When was this?

A. I am a little ahead—from Miss O'Bryan's we went to Mrs. Ashton's to see if we could find something suitable for Peggy.

Q. Did you find anything there?

A. No—there was what I thought was a very pretty dress which had been worn on the 4th of July by one of Mrs. Ashton's salesladies.

Q. What was her name?

A. Miss Maude Osborne—it had been worn in the patriotic window; two young ladies appeared there in the window that Mrs. Ashton had fixed up and Miss Osborne wore this gown.

Q. At the time this dress was being examined or arrangements for its purchase being made, was anything said by anybody in your presence or in the presence of Mrs. Ashton, or either one of them, that the dress had been worn by one of the prostitutes from the line?

A. No, that remark was not made—she thought it was soiled.

Q. She said it was soiled?

A. She said the dress looked as though it had been worn and Miss Osborne, who was waiting on us, said, "Yes, I wore this dress on the 4th of July in the window for two or three hours," I think she said. [138—125]

(Testimony of Mrs. Grace Kelly.)

Q. Miss Osborne was a clerk at the time in Mrs. Ashton's store? A. Yes, sir.

Q. I hand you a piece of paper and ask you if you ever saw it before and if so, what is it. (Handing witness paper.)

A. This is a duplicate bill which I got the other day from Mrs. Dougherty up here, the other bill having been lost in the courtroom, I think, which shows the amount of the goods I bought and which Mr. Kelly paid for by check.

Mr. COFFEY.—We offer the bill in evidence.

Mr. DUGGAN.—We object to it; it does not appear that she knows anything about the correctness of this account. The party who made the bill is the proper party to testify to it and for the further reason that the bill is addressed to Mrs. Frank Kelly and under it the word "Ragtime"—it doesn't appear to be anything concerning the girls.

The COURT.—The bill itself is not admissible.

Q. On or about the 19th or 20th of August, 1921, did you purchase anything at Dougherty's store in the city of Anchorage for Miss Mildred Hilkert or Miss Margaret Hilkert, and if so what?

A. I purchased a dress, some hosiery, a brassiere and a corset—I believe that is all that day.

Q. What, if anything, on a later date did you purchase?

A. They went in and bought two hats, which were also put on the bill.

Q. Do you remember how much those hats cost?

A. \$12.50 each I think.

(Testimony of Mrs. Grace Kelly.)

Q. Did you pay for them?

A. They were paid for by check, by Mr. Kelly.

Q. Anything else at that or a later date?

A. I don't recall. [139—126]

Q. Then your purchases on the 19th of August, 1921, amounted to a dress, some hosiery, a corset, a brassiere and two hats—is that correct?

A. Yes, sir.

Q. Those were paid for, were they?

A. Yes, sir.

Q. Now, Mrs. Kelly, do you know Mickey O'Shea? A. Yes, sir.

Q. Did you ever have any trouble with Mickey O'Shea or an argument of any kind in your place of business? A. Yes, sir.

Q. State what that was and approximately the date of it.

Mr. HURLEY.—We object to that as incompetent, irrelevant and immaterial, unless it is shown it is connected with either Mildred or Margaret Hilkert.

The COURT.—It is admissible as showing the character of the house.

Q. What was that—tell the Court and jury what that argument was.

A. Mickey O'Shea was standing at the end of the counter one evening and he used some very improper language, language which I never permit in my presence if I can avoid it. I spoke to him about it and he didn't pay any attention to me and I slapped him in the face twice as hard as I

(Testimony of Mrs. Grace Kelly.)

could and he thanked me and said he didn't blame me.

Q. What time of day or evening was this?

A. This was, I should judge, about 11 o'clock in the night, after the girls had left.

Q. There was quite a crowd in the place?

A. Yes, sir; there was quite a crowd in the place.

Q. Do you know of your own knowledge whether or not Mickey O'Shea ever had any discussion of any kind with these girls the [140—127] Misses Hilkert? A. No.

Q. Now, Mrs. Kelly, you were in and out of the building all of the time, upstairs part of the time attending to your household duties and downstairs considerable of the time. What was the character of the people who would frequent your place of business during the course of the day and evening?

A. Being a public place people of almost all characters came in and out.

Q. Did you see business men in there?

A. Plenty of them.

Q. What would they be doing?

A. Oftentimes to play a game of pool or bowl or buy a cigar or stand around and converse and meet their friends there.

Q. On or about the first day of August did you know of Mr. Kelly's intention of employing two young ladies from the outside to come in and act as entertainers? A. Yes, sir.

Q. They were the Misses Hilkert?

(Testimony of Mrs. Grace Kelly.)

A. Yes, sir, they were.

Q. Do you know how they happened to be selected for this employment?

A. Through Mr. Waller.

Q. What did he say?

A. Mr. Waller had been outside and came back—

Q. That is Mr. Fred Waller?

A. That is Mr. Fred Waller—

Mr. DUGGAN.—We object to the question on the ground that it is immaterial, as it does not go to the question of intent and is hearsay because Mr. Waller could be called in to testify to the fact, if it is a fact. [141—128]

The COURT.—Objection overruled; it is material for any weight it might carry to show the intent.

Q. Who, if anybody, recommended these young ladies to you? A. Mr. Waller.

Q. Did you ever know these young ladies before?

A. No, sir.

Q. Was anything ever done in the Kelly pool-hall during the time these young ladies were there or afterwards or before which would tend in any way, shape, manner or form to debauch their moral character?

A. Absolutely nothing, not to my knowledge.

Q. Did you have any intent, in any way, shape, form or manner of using these girls for purposes of prostitution upon their arrival here.

A. No, sir.

(Testimony of Mrs. Grace Kelly.)

Q. On the contrary, did you do all you could to protect them? A. Yes, sir.

Q. Did you do anything that would lead them into such a course? A. No, sir.

Q. Now, when Fred Waller recommended these young ladies as entertainers, what, if anything, did he say to you, so as to put you on your notice that they were entertainers and not simply some stray characters that might be working around Seattle?

Mr. DUGGAN.—We object to that as hearsay. Objection sustained; defendants except.

Q. Mrs Kelly, you heard the testimony here of Margaret Hilkert, Peggy, in which she testified that you and Mr. Kelly had arranged a party to go out to Lake Spenard,—is that correct?

A. No, sir.

Q. Did you ever arrange such a party? A. No.
[142—129]

Q. How did you happen to go on such party?

A. After we closed up, we went down to the Frisco for lunch. While we were there, there was a party that the girls were with—there were four of them in there, two girls and two gentlemen, in a box. One of the boys saw us out there or heard us and came out and invited us in and while we were there, the matter of the trip out to the Lake came up. I didn't want to go,—I didn't care to go on night rides, but they finally prevailed on me to go and we went out on this trip, the six of us.

Q. What time did you return to Anchorage?

A. Around six o'clock in the morning.

(Testimony of Mrs. Grace Kelly.)

Q. Was it dark or daylight? A. Daylight.

Q. Broad daylight? A. Broad daylight.

Q. This was along about the middle of August?

A. Yes, sir.

Q. Nothing unusual about being daylight that hour? A. No, sir.

Q. What time did you go out there?

A. It was about 3:30; I think they said it was four o'clock when they were out there bathing, and I remarked about its being so light and being able to go in swimming that time in the morning.

Q. Have you done anything while a partner of your husband's up there in this pool-room business or being associated with him—have you done anything which would in any way cause a virtuous young lady to be ashamed of her employment up there?

A. Not anything that I ever knew of.

Q. Has the place ever been conducted to your knowledge during the time you have been there in a way that would lead a virtuous young lady to practices of immorality or debauchery? [143—130]

A. No.

Q. Was there any intent on your part when you, with the assistance of your husband, engaged the services of these two young ladies, the Misses Hilbert, to come here to be employed in your place, to use them for purposes of prostitution?

A. Absolutely not.

Mr. COFFEY.—That is all.

(Testimony of Mrs. Rose McFarland.)

Mr. DUGGAN.—We have no cross-examination.
Witness excused.

Whereupon court adjourned until to-morrow (Friday, February 24, 1922), at the hour of ten o'clock A. M. [144—131]

Friday, February 24, 1922.

MORNING SESSION.

Testimony of Mrs. Rose McFarland, for Defendants.

MRS. ROSE McFARLAND, a witness called and sworn in behalf of the defendants, testified as follows:

Direct Examination by Mr. COFFEY.

Q. Please state your name?

A. Rose McFarland.

Q. You are a resident of Anchorage?

A. Yes, sir.

Q. You know the defendants, Frank and Grace Kelly? A. Yes, sir.

Q. Were you ever in their employ?

A. Yes, sir.

Q. About what time?

A. I went to work for them the 9th day of March and worked until the 13th day of May, I believe; two months.

Q. Last year, 1921? A. Yes, sir.

Q. What were your duties while you were employed there?

A. Well, just working in the cigar part of the

(Testimony of Mrs. Rose McFarland.)

place, cigars and soft drinks; I also assisted Mrs. Kelly in the household duties.

Q. Did you reside there? A. Yes, sir.

Q. Lived there? A. Yes, sir.

Q. Where were your apartments?

A. When I first went to work for them I lived at the Alaskan Hotel and later moved up in the apartments with Mr. and Mrs. Kelly and later had a room in the front part vacated that I took.

Q. That is on the Fourth Street end of the building, on the second floor? [145—132]

A. Yes, sir.

Q. Do you know Miss Mildred Hilkert and Miss Margaret Hilkert? A. I do.

Q. Did you ever meet them during the month of August and September?

A. Yes, I met the girls.

Q. Where? A. At my own hotel.

Q. When? Can you fix the date approximately?

A. No, I can't.

Q. Was it some time during the month of August, last year? A. I believe it was, yes.

Q. Where did you meet them?

A. At my house, at my hotel.

Mr. DUGGAN.—The Government objects to any further inquiry in this matter, as it now appears that this is an incident that took place outside of the Kelly pool-hall and on the objection of the defendants the evidence of anything that took place outside of the pool-hall was ruled out in the

(Testimony of Mrs. Rose McFarland.)

Government's case, and it is immaterial to this case.

The COURT.—The objection will be sustained—there has been no foundation laid for this testimony.

Defendants allowed an exception to the ruling.

Q. During the time of your employment at the Kelly pool-room, Mrs. McFarland, what was the moral condition, if you know?

Mr. HURLEY.—We object as incompetent and immaterial—it is not shown she was there at the time the girls were there.

The COURT.—She may answer.

A. It could not be better.

Q. While you were in the employ of the Kellys, either of them, were you ever asked to engage in the practice of [146—133] prostitution of any kind or character?

Mr. HURLEY.—We object as incompetent, irrelevant and immaterial.

Objection sustained; defendants except.

Q. What kind of people, if you know, frequented the Kelly pool-hall during the time of your employment there?

A. Just people of the town.

Q. Business people? A. Yes.

Q. Did you ever have any trouble of any kind or character with the Kellys while you were employed with them?

Mr. HURLEY.—Same objection.

Objection sustained; defendants except.

(Testimony of Mildred Hilkert.)

Mr. COFFEY.—At this time I wish to withdraw the witness now on the stand and call Miss Mildred Hilkert for further cross-examination.

The COURT.—You may do so.

Witness withdrawn.

Testimony of Mildred Hilkert, for Defendants (Recalled—Cross-examination).

MILDRED HILKERT, recalled for further cross-examination.

(By Mr. COFFEY.)

Q. Miss Hilkert, during the month of August, 1921, did you ever have a conversation at the Alaskan Hotel with Mrs. Rose McFarland?

Mr. DUGGAN.—We object as not proper cross-examination.

Objection overruled; exception allowed.

A. Yes.

Q. While there were present your sister and Mrs. McFarland and one or two others?

A. Yes, I had some conversation with Mrs. McFarland, twice.

Q. At the Alaskan Hotel? [147—134]

A. Yes.

Q. Did you at the time stated by you in this conversation with Mrs. Rose McFarland state in effect that you were perfectly satisfied where you were, at Kelly's, that you could make more money but that Kellys wouldn't permit you to do the things you wanted to do and that the reason you didn't go down the line at the request of your escort and others there that you had figured on quit-

(Testimony of Mildred Hilkert.)

ting the Kellys and opening up uptown—did you ever have such a conversation?

A. That is not true.

Q. Now, at one of these conversations had at the Alaskan Hotel with Mrs. McFarland, present your sister and others, if you know them, we don't—didn't you state to her, Mrs. McFarland, that there was some woman here in town wanted to get the Kellys and you would like Mrs. McFarland to go on the stand and testify that she had been solicited by either or both of the Kellys to engage in the practices of prostitution?

The COURT.—When was this?

Mr. COFFEY.—At one of the two conversations she has identified.

Q. You testified you had two conversations?

A. Yes.

Q. When was the first conversation?

A. The Sunday night before Labor Day.

Q. When was the next?

A. Three days before I left for Valdez to go to the grand jury.

Q. At either of these times, did you state to Mrs. McFarland that there was some woman here in town that wanted to get the Kellys and ask Mrs. McFarland if she would go on the stand and testify that she had been solicited while in the employ of the Kellys to engage in the practice of prostitution?

A. The question was, not of that kind. Somebody had told me that [148—135] Mrs. McFarland

(Testimony of Mildred Hilkert.)

herself had trouble with the Kellys and the first time I was over there, she told me about the trouble and how much she disliked Mr. Kelly and a man present spoke up in Mrs. Kelly's defense. At that time she was very bitter, and the next time she spoke about everything else but refused to have anything to do with it.

Q. You didn't have that conversation?

A. No—she refused to say anything more about it.

Q. Those were the only two conversations you had?

A. That is all relating to that, yes, sir, that is all the conversation, but I saw her on the street once—she was always very nice to me.

(By Mr. DUGGAN.)

Q. Did you ever ask Mrs. McFarland to testify to anything that wasn't true? A. No.

Q. Did you ever ask anyone to testify in this case to anything which wasn't true?

Mr. RAY.—We object to that.

Objection sustained.

Q. Did you ask Mrs. McFarland to testify in this case at all?

A. I didn't ask her to testify. When the conversation with Mrs. McFarland took place it was before anything had been done by the Government whatever—it was the time Mr. Kelly had been sending his lawyer to us, trying to force us, under a misappropriation of funds—

(Testimony of Mrs. Rose McFarland.)

The COURT.—Never mind that. Tell about Mrs. McFarland.

The WITNESS.—There was nothing relating to this case whatever.

Witness excused. [149—136]

**Testimony of Mrs. Rose McFarland, for Defendants
(Recalled).**

MRS. ROSE McFARLAND, recalled.

Continuation of Direct Examination by Mr. COFFEY.

Q. Has the Assistant United States Attorney just been talking to you? A. No.

Q. You haven't had any talk within the last ten minutes with any member of the District Attorney's staff? A. No.

Q. Did you ever have any conversation with Miss Mildred Hilkert at the Alaskan House, during the middle of the month of August, 1921?

A. Yes, sir.

Q. State what that conversation was?

A. The conversation was—

Mr. HURLEY.—We object unless it is shown who was present at the time.

Mr. COFFEY.—State who was present.

A. Her sister was present and another young lady.

Q. That is Peggy?

A. Yes, sir, and the other, I don't remember her name, and a gentleman named Mr. Rich and the

(Testimony of Mrs. Rose McFarland.)

two boys here—Gordon and Wesley—I don't remember their surnames.

Q. What was said by Mrs. Bowles, or Miss Mildred Hilkert?

A. She told me that she had another woman who had come to her and said they wanted to job the Kellys and said that they had it in for them and wanted to get them out of business and wanted to get them out of town, and asked if I would go on the stand and say that the Kellys had asked me to rustle when I worked for them, and I replied that I would absolutely refuse to do it.

Q. Was it true what they intimated in their request? [150—137] A. No, sir.

Mr. DUGGAN.—We object and move to strike the answer.

Objection sustained and motion granted; defendants except.

Q. Did you have any further conversation with Mrs. Bowles? A. Yes, sir.

Q. State what that conversation was?

The COURT.—Who was present?

A. The same parties were present.

Q. What time was it?

A. I judge it was about, some place near eleven o'clock at night.

Q. What time of the month and year?

A. It was in September, I believe.

Q. State what the conversation was.

A. Mildred asked to have rooms at my place—

(Testimony of Mrs. Rose McFarland.)

Q. That is the Alaskan Hotel?

A. Yes. She said they had a cabin and they were being hounded and had been raided and made to get out.

Q. Get out of where? A. Out of the cabin.

Q. Did you rent them any rooms? A. No, sir.

Q. Why?

Mr. HURLEY.—We object to that as incompetent, irrelevant and immaterial.

The COURT.—This conversation you are asking about now isn't the one you asked Mrs. Bowles about. That will be stricken from the record; you can only have Mrs. McFarland testify on impeachment as to the statements you asked Mrs. Bowles about.

Mr. COFFEY.—Then I will ask permission to recall Mrs. Bowles.

The COURT.—Very well.

Witness excused. [151—138].

Testimony of Mrs. Bowles, for Defendants (Recalled—Cross-examination).

MRS. BOWLES, recalled, for further cross-examination, by Mr. COFFEY.

Q. Mrs. Bowles, did you at the Alaska House, at Anchorage, Alaska, about the middle of August, 1921, in the presence of your sister and others—in the presence of your sister, Virgil Rich, a man by the name of Wesley and a man named Gordon Gifford, ask Mrs. McFarland whether or not you could secure rooms there in the Alaskan House,

(Testimony of Mrs. Bowles.)

that you were being hounded around town, at your cabin, and that you were going to do what you wanted to do while you were at Kelly's—is that true or not?

A. That is not true. I did ask Mrs. McFarland if she would let my sister and I room there and she informed me that her house wasn't run for women she had no women staying there, that she catered to men only, and furthermore, that statement was not made in the middle of August; it was made in September, three weeks after we left Kelly's, and after our cabin had been raided several times and broken into and our trunks, and she was very nice to me and was a woman and I thought would let us into the house.

Q. You didn't have any conversation previous to that with Mrs. McFarland on this subject?

A. No, sir; I only saw Mrs. McFarland twice.

Witness excused. [152—139]

**Testimony of Mrs. Rose McFarland, for Defendants
(Recalled).**

MRS. ROSE McFARLAND, recalled by Mr. COFFEY.

Q. Mrs. McFarland, did you in the presence of Miss Mildred Hilkert, her sister, known as Miss Margaret Hilkert, and a man named Wesley, and a man named Gordon Gifford, at the Alaskan House, in the latter part of August or first part of September, have a conversation with Miss Mildred Hilkert during which she asked you to secure rooms?

(Testimony of Mrs. Rose McFarland.)

Mr. DUGGAN.—We object.

Objection sustained; defendants except.

Q. Did you at this time designated have a conversation at the Alaskan Hotel? A. Yes, sir.

Q. State what that conversation was. The latter part of August or first part of September?

A. The same parties were present I spoke of before.

Q. Mention those names again?

A. Mr. Rich and Gordon and Wesley, I forget their surnames, and Margaret and this other young lady—I don't remember her name.

The COURT.—Gordon is Gordon Gifford?

A. Yes, sir; Gordon Gifford.

Q. What was the approximate date of that conversation? A. I really couldn't tell you.

Q. Approximately?

A. It was along in September, I think.

Q. Now, state what that conversation was, Mrs. McFarland?

A. In regard to her wanting the rooms?

Q. Yes.

A. She wanted to get rooms—I told you what she said about the cabin; she said they had a cabin and it had been raided and they had been ordered to get out and they couldn't find a place to live. She also said that they met plenty of men [153—140] with money but they had no place to take them.

Mr. DUGGAN.—We move that the last part of that answer be stricken.

(Testimony of Mrs. Rose McFarland.)

The COURT.—The motion will be granted because it wasn't put to the witness, Mrs. Bowles. Defendants except to ruling.

Q. Did they rent rooms there from you?

A. They did not.

Q. Did I understand you to say that you did rent the rooms to her? A. No, I did not.

Q. Why didn't you?

Mr. DUGGAN.—We object as incompetent.

The COURT.—Did you give any reason to her why you didn't rent?

A. Yes, I told Miss Hilkert I was running a bachelors' quarters—I didn't rent rooms to ladies.

Mr. COFFEY.—That is all.

Cross-examination by Mr. HURLEY.

Q. Mrs. McFarland, did you have a conversation with Mr. J. B. Larson at your place, at which you and Mr. Larson were present, about three weeks after the day Kelly was arrested, in which you told Mr. J. B. Larson in effect that the defendant Kelly told you that he had been handling sporting women for years and that he didn't want a couple of chippies to put anything over on him?

A. No, sir; I did not.

Q. At the same time and at the same place, the same parties present, did you say to Mr. Larson in effect that you didn't know anything that would help Kelly, referring to this case?

A. No, I did not.

(By Mr. RAY.)

Q. Do you know who J. B. Larson is? [154—141]

(Testimony of Mrs. Rose McFarland.)

A. The only Larson I know in the town is the man who owns the Empress grocery store.

Q. You know to whom they refer?

A. Well, I suppose it is this Larson—it is the only Larson that has ever been in my house, to my knowledge, and we have never had any conversations in regard to the Kellys.

Witness excused. [155—142]

Testimony of Mrs. Mabel Pierce, for Defendants.

MRS. MABEL PIERCE, a witness called and sworn in behalf of the defendants, testified as follows:

Direct Examination by Mr. COFFEY.

Q. What is your name? A. Mabel Pierce.

Q. You are a resident of Anchorage?

A. Yes, sir.

Q. You know the defendants, Frank Kelly and Mrs. Kelly? A. Yes, sir.

Q. How long have you known them?

A. A little over a year.

Q. Were you ever employed by either of them?

A. Yes, sir.

Q. In what capacity?

A. I was sewing at their place on several occasions, at their residence.

Q. Where is that? A. Over the pool-hall.

Q. That is at the south end of the pool-hall, in their living quarters? A. Yes, sir.

Q. Did you have occasion to note the character of the house, Mrs. Pierce, while you were employed there?

(Testimony of Mrs. Mabel Pierce.)

A. As far as I know it was very good.

Mr. DUGGAN.—We object as not responsive to the question.

Q. When were you employed there?

A. I don't know exactly the date.

Q. Approximately?

A. It was some time around June, I think, or around there somewhere.

Q. 1921? [156—143] A. Yes, sir.

Q. Last year? A. Yes, sir.

Q. Now, during the time of your employment there, were you familiar with the character of the people that entered the place?

Mr. DUGGAN.—The question should go to the pool-hall, not to the place—it should go to the place where these transactions are testified to having taken place; if it goes to the character of the defendants, we want to know it.

Objection overruled.

Q. What was the character of the people that frequented the place, if you know?

A. Very good.

Q. Did Mr. Kelly ever have a talk with you, Mrs. Pierce, regarding the employment of your daughter in his place of business?

Mr. DUGGAN.—We object to that as incompetent and immaterial.

Objection sustained; defendants allowed an exception to the ruling.

The COURT.—You can't prove reputation by individual instances.

Mr. RAY.—I want to make an offer not in the presence of the jury.

Mr. DUGGAN.—We insist he make his offer in writing.

WHEREUPON the jury was excused and retired from the room—

By Mr. RAY.—The defendants offer to prove by the testimony of the witness on the stand, upon the question of intent upon the part of the defendants on August 3, 1921, at the time they provided transportation for the prosecuting witnesses, if they did so provide the transportation, that the witness frequently visited the cabaret show with Mrs. Munson and husband and with Bill Jones; that the character of the performance did not indicate immorality, looseness or [157—144] debauchery and she would be willing to have her daughter work for the Kellys; that the young lady is dead and cannot now be produced as a witness.

The COURT.—It may all be admitted except the statement that she would be willing to have her daughter work for the Kellys. I can't see how that would have any bearing.

Mr. RAY.—We ask an exception to the ruling.

The COURT.—The testimony offered will be admitted except on that one point; that offer is rejected and the exception allowed.

WHEREUPON the jury returned and direct examination of Mrs. Pierce was continued by Mr. COFFEY.

Q. How long were you employed there at Kelly's, approximately?

(Testimony of Mrs. Mabel Pierce.)

A. Well, possibly two or three weeks—two weeks possibly.

Q. During that time did you have occasion to observe the character of the people that frequented the pool-room?

A. I have been through there many a time.

Q. When was that you were employed there?

A. I said some time, I thought, in June.

Q. 1921? A. Yes.

Q. During the time of your employment there, did you have occasion to observe or did you observe the character of the people that frequented the pool-room downstairs?

Mr. DUGGAN.—We object to that—it doesn't cover the period of time charged in the indictment or covered by the evidence.

Objection overruled.

A. Yes.

Q. What was the character, if you know?

A. Good. [158—145]

Q. Did you ever at any time that you were employed there see anything that would indicate the fact that the practice of prostitution was being indulged in? A. Nothing at all.

Mr. DUGGAN.—We object to that and move to strike the answer.

Objection sustained and motion granted. Defendants except.

Q. Did you ever visit the cabaret while you were there?

A. My daughter and I went in several times with the Munsons.

(Testimony of Mrs. Mabel Pierce.)

Q. That was about what time of year?

A. I couldn't say—I couldn't say just the date; it was a short time before they left there.

Q. Do you remember when they left?

A. No, I don't know that.

Q. Was it before or after Labor Day, do you remember?

A. No, I don't believe I could say that.

Q. Was it in the summer?

A. We went in to hear them sing, my daughter and I.

Q. During your visits to the cabaret there, did you see anything of any immoral nature?

A. Nothing at all.

Q. Did you see any drunken or dissolute characters there?

A. Nothing at all. I passed through there many times when I was going to work, had to go through there to get to Mrs. Kelly's or get in and never saw anything, nothing but the very best.

Mr. COFFEY.—That will be all.

Cross-examination by Mr. DUGGAN.

Q. Mrs. Pierce, you spoke of going in there with the Munsons—that was when the Munsons were there? A. Yes, sir. [159—146]

Q. That was quite a while after Mr. Kelly was arrested, wasn't it?

A. I don't know anything about that.

Q. Didn't you hear anything about Mr. Kelly being arrested?

A. Yes, but I didn't put down any dates, or keep

(Testimony of Mrs. Mabel Pierce.)

it in my mind. We just went in several times and heard them sing and that is all I can tell—I couldn't tell dates at all; I don't remember.

Q. What time of day did you go?

A. In the evening.

Q. About what time?

A. Possibly it was nine or ten o'clock, somewhere along there, I think.

Q. That is while the Munsons were singing there?

A. Yes, sir.

Q. Were there any other women there at that time?

A. Yes, there was one woman there,—I don't know her name, with Mrs. Munson, with them; she sang also.

Q. While Margaret Hilkert and Mildred Hilkert were there, were you in the pool-hall?

A. No, I was not.

Witness excused. [160—147]

Testimony of Tom W. Haines, for Defendants.

TOM W. HAINES, a witness called and sworn in behalf of the defendants, testified as follows:

Direct Examination by Mr. COFFEY.

Q. State your name. A. Tom W. Haines.

Q. Where do you reside? A. Anchorage.

Q. I will ask you, Mr. Haines, during the latter part of August or the first of September, when the Government witnesses Margaret Hilkert and Mildred Hilkert were working at the Kelly pool-room, whether or not you were requested by Mr. Kelly on one occasion—

(Testimony of Tom W. Haines.)

Mr. DUGGAN.—We object as leading.

Q. Were you at the Kelly pool-room one evening just after the performance when the Hilkert girls had gone downtown?

A. In the latter part of August one night, yes.

Q. I will ask you if Mr. Kelly made any request of you at that time? A. Yes.

Q. You may state what Mr. Kelly requested you to do.

A. It was after the performance had closed, at two o'clock, and we were playing cards back where the bowling-alleys are, and the girls had left to go to lunch or some place, I don't know where, and Mrs. Kelly said, "We will continue playing until the girls return because I have to let them in."

Cross-examination by Mr. DUGGAN.

Q. You say you were playing cards?

A. Yes, sir.

Q. For money? [161—148]

Objected to—objection sustained.

Q. Mr. Haines, on or about the time to which you have just testified, various other parties being present, including yourself, Mr. Kelly and Mr. Mossman, were you not intoxicated there?

Mr. MURPHY.—We object to that as incompetent, irrelevant and immaterial, having nothing to do with the case and improper cross-examination.

Objection overruled—defendants allowed an exception.

Q. At this time that you have testified to or about that time, didn't Mr. Mossman come in when

(Testimony of Tom W. Haines.)

you were drinking white mule in Kelly's place and take it away from you?

Same objection. Objection sustained.

(By Mr. MURPHY.)

Q. On the occasion mentioned, who was present?

A. Only one man I knew—there were three or four men present but only one man that I knew.

Witness excused. [162—149].

Testimony of Frank B. O'Shea, for Defendants.

FRANK B. O'SHEA, a witness called and sworn in behalf of the defendants, testified as follows:

Direct Examination by Mr. COFFEY.

Q. What is your name?

A. Frank B. O'Shea.

Q. What is your business? A. Brakeman.

Q. By whom are you employed now?

A. The commission.

Q. How long have you been in the employ of the commission? A. Going on two years.

Q. Always in the capacity of brakeman?

A. Fifteen months.

Q. Where are you employed now? A. Mile 35.

Q. Do you know the defendants Frank and Mrs. Grace Kelly? A. I do.

Q. Were you ever in their place of business in Anchorage, Alaska, during the month of August and the early part of September, 1921? A. Yes, sir.

Q. Do you know Miss Margaret Hilkert and Miss Mildred Hilkert? A. Yes, sir.

Q. Do you know what they were doing there?

(Testimony of Frank B. O'Shea.)

A. They were entertainers.

Q. What was that entertainment as far as you know—what was the nature of it generally?

A. One was a musician and one a singer.

Q. One played the piano and the other sang?

A. Yes.

Q. Did you ever have any dispute with Mrs. Kelly in the Kelly [163—150] pool-hall in the latter part of August, 1921?

A. I had no dispute but I remember being slapped in the face by her.

Q. Tell the jury what the occasion of that was.

A. I lost my head. Benedict, a partner of mine, and I, we got talking too loud and I used vile language and Mrs. Kelly brought me to my senses by slapping me in the face and I immediately apologized; it was a remark she said I shouldn't use in the presence of ladies and it brought me to my senses and I apologized.

Q. Whom did she refer to by the ladies, those who were in the pool-hall? A. Yes, sir.

Q. Did you apologize then for the use of this language? A. I did.

Q. And when she referred to the ladies present, she meant the Misses Hilkert, did she?

A. Mrs. Mildred Bowles, I think that is her name, and Margaret Johnson were both present.

Q. They were there when Mrs. Kelly made this remark about the ladies? A. Yes.

Q. And Mrs. Kelly was evidently referring to those ladies?

(Testimony of Frank B. O'Shea.)

A. She undoubtedly was referring to them because they were there—she made the remark, ladies.

Q. Were there any other ladies there besides the Misses Hilkert and Mrs. Kelly?

A. Not to my knowledge, no.

Q. If there had been, you would have known about it? A. Yes. [164—151]

Q. Did you ever have any conversation with either of the Misses Hilkert regarding their employment there?

Mr. HURLEY.—We object to that unless it is shown the Kellys were present or goes to the rebuttal of something already testified to.

The COURT.—This is asked for the sole purpose of showing the character of the house by statements made by these young ladies?

Mr. RAY.—No, sir—that is not the purpose. The purpose is to rebut the testimony which has been offered in this case and admitted by your Honor from which inferences may be drawn showing the intent the Kellys had on the third day of August when they sent for these people. I do not consider it impeaching testimony but direct testimony on the question of intent.

Mr. HURLEY.—If this goes to anything that the girls testified to when they were on the stand, we have no objection but if they are trying to lay the foundation for an impeaching question we object to it, on the ground that there has been no foundation laid, in the manner prescribed by law.

(Testimony of Frank B. O'Shea.)

Mr. RAY.—We are not trying to impeach anyone; we are trying to introduce evidence from which the intent with which the defendants acted on August 3, 1921, when they sent for these girls may be gathered.

The COURT.—Are you trying to elicit from this witness statements made by the girls? Please read the question, Mr. Reporter.

The question was read as follows:

Q. Did you ever have any conversation with either of the Misses Hilkert regarding their employment there? [165—152]

The COURT.—It seems to me it is an impeaching question.

Mr. HURLEY.—We object to it on the ground that there is no proper foundation laid, and it is incompetent.

The COURT.—Are you asking now for a statement made by one of the girls to this young man?

Mr. COFFEY.—The purpose is to show the attitude of these girls toward their employment and the place generally; there is no impeachment.

Mr. DUGGAN.—Then we object to it as being immaterial.

The objection was by the Court overruled.

A. I had casual conversation with them, none I can recall in particular. My mind might be refreshed by some matter but I can't remember right now any particular conversation I had.

Q. Did you ever have any conversation with

(Testimony of Frank B. O'Shea.)

them regarding quitting their employment?

A. No lengthy conversation. I was up in the dance hall one night and they told me they were going to quit.

Q. When?

A. It was on Saturday night. I was dancing with Mrs. Bowles and she made the remark she was going to quit and I told her I guessed that was her business.

Q. Did she give any reason?

A. None I remember, no.

Q. You say you danced with her frequently?

A. I was dancing with her that night, not frequently, no, very seldom.

Q. During your visits to the pool-room did you ever see anything that would indicate to your mind that these girls were being used for the purpose of prostitution? A. No.

Q. That there was any signs of any debauchery? [166—153] A. No, I did not.

Q. What do you know of the character of the people that frequented the place there, the pool-room?

A. I never could see anything the matter with the character of the people. You don't expect to find the best kind of people in cabarets but as a general thing I didn't see anything wrong with the people.

Q. You visited the cabaret frequently?

A. I did.

(Testimony of Frank B. O'Shea.)

Q. What were the conditions there—did they tend to immorality in any way?

A. Not that I could see.

Q. Did you ever have a talk with a man named McNamara concerning this trial?

Mr. HURLEY.—We object as immaterial.

Objection sustained; defendants allowed an exception.

Q. Mr. O'Shea, did anyone ever offer you any money to appear as a witness in this trial on behalf of the Government?

Mr. HURLEY.—We object to that; objection sustained; defendants except.

Mr. COFFEY.—That's all.

Cross-examination by Mr. HURLEY.

Q. What do you understand by the word debauchery—what does it mean?

A. Well, my idea of debauchery—I am not educated, I will have to admit the fact but I will do the best I can. A general outline of debauchery would be anywhere from getting drunk to soliciting trade. [167—154]

Q. At that pool-room, at any time you were in there, you never saw anybody drunk or getting drunk? A. I can't recall.

Q. Your mind was in a pretty precarious condition there one evening, wasn't it, a little foggy?

A. Several evenings.

Q. Quite foggy? A. Yes, sir.

Q. And things might have happened that you wouldn't have been very conscious of? A. Yes.

(Testimony of Frank B. O'Shea.)

Q. Along about that time you used to drink quite a bit yourself? A. Off and on, yes.

Q. You saw other men that were in there drunk, didn't you?

A. Undoubtedly there was some in the cabaret that was drunk.

Q. Quite a number of them intoxicated?

A. I couldn't say the number—I have seen some drunk.

Q. Different times—were you there in the latter part of August and the early part of September?

A. Yes.

Q. In the latter part of August and the early part of September? A. During that time, yes.

Q. Now, I will ask you if you didn't say, about three nights ago in the Union Restaurant, in the presence of Mr. R. Shively and Harry Barnes, Harry Bowers and Mildred and Margaret Hilkert, that your last instructions from the defendants was to paint the character of Margaret and Mildred Hilkert as absolutely white—that you were not to say anything that would in any way tend to lower their character or anything of that kind, or words to that effect—did you make that statement?

A. I met the four parties named in that restaurant, yes. [168—155]

Q. Didn't you make that statement?

A. I will tell you the statement I made.

Q. Did you make that statement—did you make a statement to that effect?

A. Not to that effect, no, not particularly.

Q. Explain what you did say.

(Testimony of Frank B. O'Shea.)

A. I went in there; I had always been on friendly terms with those girls at all times and one of the gentlemen in the place—I don't know, I kinder felt like an outsider because I was subpoenaed on the part of the defense, but have always been on friendly terms with those girls. The conversation came up—I may have brought it up myself, I can't recall; anyway one of the gentlemen spoke up, I don't know which one it was, and said they were both cautioned not to speak to any of the defendant's witnesses, and I spoke up and said, "I didn't care whether they have been cautioned or not, and I have been cautioned, I will speak to either one of you when I see you or any time I see you"; and I spoke up and said, "Any way, the only thing I have got to say is this: It is the easiest thing for me to go on the witness-stand on the part of the defense, as all I can say is that you are both perfect ladies and I think that is what you are trying to prove."

(By Mr. COFFEY.)

Q. Did you frequent other pool-halls around town? A. Yes, sir.

Q. Did you ever see any drunken people in other pool-halls?

Mr. HURLEY.—We object to that.

Objection sustained; defendants except.

Q. Didn't the District Attorney's office or somebody connected with it tell you that they didn't want to blacken the [169—156] character of these girls or did want to blacken the character of these girls?

(Testimony of Frank B. O'Shea.)

Mr. HURLEY.—We object to that.

Q. Did Mr. McNamara say that to you?

Mr. HURLEY.—We object.

Objection sustained; defendants except.

Q. To get the matter clear, you told these young ladies and all these gentlemen present on this occasion, in the Union Restaurant, that you didn't know anything bad about the girls?

A. I certainly did.

Q. As far as you knew, the girls were always first class, good girls?

A. They were in every respect, as far as I could see.

Q. And weren't you instructed by the defense that the defense didn't want to blacken the character of these girls; isn't that a fact?

A. Yes, that is a fact.

Witness excused. [170—157]

Testimony of William S. Elliott, for Defendants.

WILLIAM S. ELLIOTT, a witness called and sworn in behalf of the defendants, testified as follows:

Direct Examination by Mr. MURPHY.

Q. State your name.

A. William S. Elliott.

Q. State whether or not you have a lease from Mr. Kelly for the hall portion of the Robarts Building for Saturday nights?

A. I have had a lease—I believe it has about expired.

(Testimony of William S. Elliott.)

Q. Did you have that lease during the months of August and September, 1921? A. I did.

Q. Do you know who the Misses Hilkert are or were along in the latter part of August and September of this year?

A. I probably know them by sight—I don't know them by name.

Q. The girls that were working there.

A. I knew a couple of girls worked there—I knew them by sight.

Q. State whether or not you ever made a complaint to Mr. Kelly as to their conduct on the dance floor, in the dance you conducted upstairs.

Mr. DUGGAN.—We object to that as calling for a conclusion of the witness and is immaterial.

Objection overruled.

A. Relative to the conduct on the floor, I can't say that I did—I did make a complaint to Mr. Kelly, though.

Q. State the nature of that complaint?

A. As to the girls traveling upstairs and downstairs from the pool-room into the dance floor and back again at intervals [171—158] between dances. I did object to that and told Mr. Kelly that the girls had to stay either upstairs or downstairs, one or the other, that they couldn't travel back and forth.

Cross-examination by Mr. DUGGAN.

Q. You are leasing the building Mr. Kelly now?

A. Yes, I have been, up to the first of February.

Witness excused.

Recess to 2 P. M. [172—159]

Testimony of John S. Williams, for Defendants.

JOHN S. WILLIAMS, a witness called and sworn in behalf of the defendants, testified as follows:

Direct Examination by Mr. COFFEY.

Q. What is your name?

A. John S. Williams.

Q. What business are you engaged in?

A. Soldier.

Q. Located here in Anchorage, the barracks?

A. Yes, sir.

Q. Have you ever been employed by Mr. Kelly?

A. Yes, sir.

Q. You know Mr. Kelly and Mrs. Kelly?

A. Yes, sir.

Q. What time were you employed there?

A. September, October, November.

Q. Of last year, 1921? A. Yes.

Q. In what capacity?

A. Looking after the pool-tables.

Q. What were your hours of employment?

A. From seven in the evening to twelve o'clock.

Q. Were you there when the Misses Hilkert were employed there as cabaret singers and entertainers? A. Yes, sir.

Q. During the time of your employment there, what was the character of the people that frequented that pool-room?

A. They seemed all right,—people that like to go out and be [173—160] entertained by singing and playing pool.

(Testimony of John S. Williams.)

Q. Did you ever observe any dissolute characters there? A. No, sir.

Q. Did you ever see any great evidence of any drunkenness? A. No, sir, I did not.

Q. Did you ever see any evidences of immorality, debauchery and prostitution? A. No.

Q. Did you ever have any occasion to deliver any messages to the Misses Hilkert while they were employed there? A. Yes, sir.

Q. When were they delivered, Mr. Williams?

A. About nine o'clock one evening.

Q. To whom, Miss Mildred or Miss Margaret?

A. The tallest one.

Q. That would be Mildred? A. Yes.

Q. From whom was that message received?

A. From Chauncey Peterson.

Q. Did you deliver it? A. Yes, sir.

Q. Was there any remonstrance made of any kind by Mr. Kelly?

Mr. HURLEY.—We object to anything Kelly did in regard to the message and what the message was, as incompetent and immaterial.

Objection overruled.

A. Yes, sir.

Q. What was it—just state to the Court and jury what it was.

A. I went down to deliver the message and Kelly said, "Where have you been?" "Upstairs delivering a message." "Damn it," he says, "don't [174—161] do that any more; you can't work for me if you deliver messages around here. I don't allow anything like that going on here." We ar-

(Testimony of John S. Williams.)

gued back and forth and he got pretty badly peeved and I walked out.

Mr. MURPHY.—That's all.

Cross-examination by Mr. HURLEY.

Q. You were working for Kelly at the time you delivered these messages? A. Yes, sir.

Q. Did you quit your employment with Kelly at that time? A. I did.

Q. I thought you said you worked during September and October?

A. I did, I hired back again.

Q. When were you employed again?

A. Three days after.

Q. Did he fire you again and employ you in three days? A. No.

Q. How long were you there while these girls were there?

A. All the time except those three days.

Q. You were working there all the time they were excepting those three days? A. Yes, sir.

Witness excused. [175—162]

Testimony of Robert S. Temme, for Defendants.

ROBERT S. TEMME, a witness called and sworn in behalf of the defendants, testified as follows:

Direct Examination by Mr. COFFEY.

Q. What is your name?

A. Robert S. Temme.

Q. You are a resident of Anchorage?

A. Yes, sir.

Q. What is your business?

(Testimony of Robert S. Temme.)

A. Moving picture business—manager of the Empress Theatre here.

Q. Have you ever employed or caused to be employed people from the outside as singers in your theatre, or performers? A. Yes, sir.

Q. How long have you been employed in this business? A. A matter of about three years.

Q. When you employed the parties you referred to in my last question, did you advance transportation?

Mr. DUGGAN.—We object as not calling for any evidence that will meet the issues in this case and as incompetent, irrelevant and immaterial,—incompetent to prove anything or disprove anything charged against the Kellys or either of them.

Objection sustained; defendants allowed an exception to the ruling.

Q. Is it customary, Mr. Temme, to advance transportation to people that you are employing from the states?

Mr. DUGGAN.—We object as leading.

Q. What is the custom in employing performers, if any?

A. It is customary, in all transactions of that nature, to [176—163] advance transportation; so far as my knowledge is concerned we have never been able to talk business to an entertainer of any kind in the states without sending transportation to the states, whether Southeastern Alaska or other points.

(Testimony of Robert S. Temme.)

Q. And that is the usual custom, as far as you know? A. Yes, sir.

Q. How is that transportation repaid that is advanced to performers?

A. In the instances that I have been connected with we have paid the transportation as a part of the consideration for which they are coming to work for us.

(By Mr. HURLEY.)

Q. About how many entertainers have you ever had come up to Anchorage from the outside?

A. We have only had, as my memory serves me now, one who came.

Q. You don't know anything about the custom of bringing women here for purposes of prostitution or debauchery or other immoral purposes?

Objected to; objection sustained.

Q. In your capacity as manager of the Anchorage Theatre, do you know the custom that prevails in the employment of performers in the Empress Circuit, all over Alaska? A. Yes, sir.

Witness excused. [177—164]

Testimony of M. D. Miller, for Defendants.

M. D. MILLER, a witness called and sworn in behalf of the defendants, testified as follows:

Direct Examination by Mr. COFFEY.

Q. What is your name? A. M. D. Miller.

Q. What is your business?

A. I have not been in any business lately.

Q. You are a resident of Anchorage now?

A. Yes, sir.

(Testimony of M. D. Miller.)

Q. Do you know the defendants? A. Yes, sir.

Q. How long have you known them?

A. Ever since I came to town,—that is about seven months, I think.

Q. Have you been a frequent visitor in the Kelly pool-hall? A. Yes, sir.

Q. Do you know the Misses Margaret and Mildred Hilkert? A. Yes, sir.

Q. Were you in the Kelly pool-hall on or about the 20th day of August? A. Yes.

Q. Did you observe any incident that occurred there in which Mr. Kelly and one of the Misses Hilkert were concerned? A. Yes, sir.

Q. What was that?

A. That was in the evening about ten o'clock. She grabbed hold of some gentleman, I don't remember which it was, and commenced dancing at that time and Kelly says to me, "My goodness, that doesn't look right," and he walked over and asked the girl to [178—165] please cut the dancing out, he didn't think that was the right kind of a dance and she said, "What are you running here, a church," and Kelly walked away and she whispered something under her breath, I didn't catch that part of it, and that is all there was to it.

Mr. COFFEY.—That is all.

No cross-examination.

Witness excused.

Testimony of Frank L. Tondro, for Defendants.

FRANK L. TONDRO, a witness called and sworn in behalf of the defendants, testified as follows:

Direct Examination by Mr. COFFEY.

Q. State your name. A. Frank L. Tondro.

Q. Better known as—

A. The Malamute Kid.

Q. How long have you been in Alaska?

A. I came here in 1897.

Q. What business have you engaged in?

A. Transportation business with dogs.

Q. Better known as dog mushing. A. Yes, sir.

Q. Where are you working now?

A. I am breaking a trail between Camp 5 and the Kantishna.

Q. Up on the railroad? A. Yes, sir. [179—166]

Q. Do you know the defendants? A. Yes, sir.

Q. Were you in Anchorage in the latter part of August and the first part of September?

A. Yes, sir.

Q. While here did you visit the Kelly pool-hall?

A. Yes, sir.

Q. Do you know the Misses Hilkert, Margaret and Mildred? A. I met the ladies there.

Q. Did you ever have any occasion to visit either of these young ladies in their rooms?

A. No, I never did.

Q. Did you attempt it?

(Testimony of Frank L. Tondro.)

Mr. DUGGAN.—We object to that as incompetent, irrelevant and immaterial.

Objection overruled.

A. Why, I met the ladies there, yes, and I made a proposition to the ladies to go and stay with them and she said that Mr. and Mrs. Kelly wouldn't allow it and she wasn't there for that business, so I let it go.

Q. That was the end of it?

A. Yes, sir; in a few minutes.

Q. During your visit there and you have been in your Alaskan experience a frequenter of pool-rooms, as all men in the North are—

A. Yes, sir.

Q. Did you observe any difference between this pool-room and other pool-rooms throughout the Territory? [180—167]

Mr. DUGGAN.—We object to that as incompetent.

Objection sustained; defendants allowed an exception.

Q. From your frequent visits there while you were in Anchorage, in August, 1921, describe to the Court and jury the conditions that prevailed there generally, as to the type of people that went there and the class of people you saw in there.

A. They were all, I should judge, good people, good business men. I went in there to see a business man; that was what brought me in there in the first place. I had important business with the man I went in to see and this young lady came up and I spoke to her, as I told you.

(Testimony of Frank L. Tondro.)

Q. Did you see any evidence of practices of prostitution or debauchery? A. No, sir.

Mr. COFFEY.—That is all.

Cross-examination by Mr. HURLEY.

Q. Is it your usual custom and practice to go into a place, a first-class place where there is no sign of debauchery and prostitution and only people of fine character are in there, and walk up to a girl in the place and ask her to go up in her room and stay with you?

A. It all depends on how it comes up.

Q. You have testified in regard to that matter, what you did up there? A. Yes, sir.

Q. And is it your custom to go into places that are first-class places, that you think are being run in a first-class manner, to approach a girl on that question in a place of that kind—is that your usual practice? A. If my business calls me there, I do.

[181—168]

Q. It doesn't make any difference about the character of the place—you would ask any woman that kind of a question, any place, would you, if you took the notion? It wouldn't make any difference what kind of a place it was or who the woman was or anything else,—it wouldn't make any difference to you?

A. If she gave me any inducement, I think I would.

Q. Did this woman give you any inducement in this place?

A. She must have or I wouldn't have asked her.

Q. What were they?

(Testimony of Frank L. Tondro.)

A. They were very friendly to me and one thing and another, and came up when I was doing business with another gentleman, and of course I naturally asked her where she was rooming and she told me—that is how it happened.

Q. And you think at that time that this was a first-class place and there wasn't anybody in there but first-class people? A. Yes, sir.

Q. You still had that notion about the place—didn't she tell you that she was not there for that purpose?

A. Yes, she told me Mr. and Mrs. Kelly didn't allow it.

Q. She wasn't there for that purpose?

A. Yes, sir.

(By Mr. RAY.)

Q. You afterwards got well acquainted with these young ladies? A. Yes, sir.

Q. And as far as you know there is nothing out of the way in the conduct of these young ladies?

A. No, sir,—not a word after that. That is the only time we had any such conversation and after that they treated me fine and I treated them like ladies.

Q. And your relations were quite intimate for a period of a month [182—169] or so?

A. Not a month,—I judge about a week after that.

By Mr. HURLEY.—You were quite a steady customer of Kelly's pool-room at that time, while you were here? A. Yes, sir, I presume so.

Witness excused.

Testimony of Miss Mary O'Bryan, for Defendants.

MISS MARY O'BRYAN, a witness called and sworn in behalf of the defendants, testified as follows:

Direct Examination by Mr. COFFEY.

Q. What is your name? A. Mary O'Bryan.

Q. You are in business here? A. Yes, sir.

Q. What line?

A. Ladies furnishing goods.

Q. During the middle of August, 1921, did Mrs. Grace Kelly—first do you know Mrs. Kelly?

A. I know her, yes.

Q. During the latter part of August, 1921, did she in company with two other young ladies call at your store for the purpose of purchasing goods?

A. Yes—after the dress was selected.

Q. Answer yes or no?

A. Yes, they called.

Q. Did they purchase any materials there?

A. A dress. [183—170]

Q. What was said when the purchase was being made, if you recall?

A. There was nothing said, only to sell the dress. I sold the dress; they selected it.

Q. Was there anything said about the dress being worn before? A. No, sir.

Q. Was the dress ever worn before?

A. No, sir.

Q. Is a dress of that type ever worn by people down the line that you know of?

(Testimony of Miss Mary O'Bryan.)

A. Not that I know of.

Q. Did you ever make such a statement?

A. No, sir.

Mr. COFFEY.—That is all.

Mr. DUGGAN.—We have no cross-examination.
Witness excused.

Defendants rest. [184—171]

REBUTTAL.

Testimony of J. B. Larson, for the Government (In Rebuttal).

J. B. LARSON, a witness called and sworn in behalf of the Government, in rebuttal, testified as follows:

Direct Examination by Mr. HURLEY.

Q. What is your name? A. J. B. Larson.

Q. What business are you engaged in in Anchorage?

A. I have a grocery store on the corner of Fourth and A and work for the Commission.

Q. Are you acquainted with Mrs. Rose McFarland? A. Yes, sir.

Q. Did you have occasion to go over to her place about two weeks after Mr. Kelly, the defendant in this case, was arrested? A. Yes, sir.

Q. What did you go over to her place for?

A. I went over with some groceries.

Q. While you were there, you being the only two persons present, did you have a conversation

(Testimony of J. B. Larson.)

with her in regard to a statement that Mr. Kelly, the defendant, had made to her? A. Yes, sir.

Q. What was that—what did she say to you in regard to that?

A. I don't know that I remember it just word for word.

Q. What was the effect of it?

A. The effect of it—

Q. Can you remember the exact time?

A. I cannot,—I don't remember the exact date, no, sir, but as I remember, to the best of my judgment, it was about two or three weeks after Kelly was arrested. [185—172]

Q. State what was said?

Mr. RAY.—We object as not binding to prove any of the issues in this case, the charge against the defendants, and as being incompetent, irrelevant and immaterial.

The COURT.—It goes to the credibility of the witness Mrs. McFarland—the question was put to her, the impeaching question.

Q. At that time and at that place, when you and Rose McFarland were present, did not Rose McFarland say in effect to you that Kelly, referring to this defendant here, told her that he had been handling sporting women for years and he didn't want a couple of chippies to put anything over on him, or words to that effect? A. Yes, sir.

Q. Is it or is it not a fact that at the same time and place, the same parties present, that Rose McFarland told you that she did not know anything

(Testimony of J. B. Larson.)

that would help Kelly in this case, referring to this case? A. Yes, sir; she did.

Cross-examination by Mr. RAY.

Q. You have been more or less active in reference to this prosecution, haven't you? A. No, sir.

Q. Haven't you been in constant consultation with the District Attorney's office?

A. Not referring to this case.

Q. You haven't discussed the case at all?

A. No, I can't say that I have. [186—173]

Q. When did you inform the District Attorney that you had had this conversation with Mrs. McFarland?

A. Mr. McCain and I talked it over last evening.

Q. And did you talk it over to-day?

A. Yes, sir.

Q. During the noon recess?

A. Since twelve o'clock.

Q. Did he tell you what Mrs. McFarland said on the witness-stand?

A. No, I don't know that he did.

Q. Did he make any statement as to what she testified to? A. Not in my presence.

Q. Not since the noon recess? A. No, sir.

(By Mr. HURLEY.)

Q. You didn't talk with Mr. Duggan or Mr. McCain or myself in regard to this to-day until after you were subpoenaed?

A. No, I was called to the telephone and a sub-

(Testimony of Sherman Duggan.)

poena was handed to me when I came into the room by Mr. Mossman.

Witness excused. [187—174]

Testimony of Sherman Duggan, for the Government (In Rebuttal).

SHERMAN DUGGAN, called and sworn as a witness in behalf of the Government, in rebuttal, testified as follows:

Direct Examination by Mr. HURLEY.

Q. Mr. Duggan, did the defendant Frank Kelly, or Mrs. Kelly, ever come to you while you were practicing law here in Anchorage, or at any other time, and get advice from you in regard to running a cabaret, or in regard to anything in any manner in connection with the conducting of their business here in Anchorage?

Mr. RAY.—We object; it would be a privileged communication that cannot in any manner be waived by an attorney who afterwards becomes District Attorney and prosecutes a case against a former client.

The COURT.—That is true, but it may be waived by the client himself. It cannot be done without the consent of the client but whenever the client himself discloses a part, he thereby waives the confidential nature of it to that extent and no further. Mr. Kelly was asked if he had consulted an attorney and it crept out two or three times in the course of the trial that the attorney he said he had consulted was Mr. Duggan. It would

(Testimony of Sherman Duggan.)

be unfair to the defendant and to Mr. Duggan if Mr. Kelly were allowed to testify he consulted an attorney, and it came out that that particular attorney was Mr. Duggan and Mr. Duggan was not permitted to testify at all or make any denial. The objection will be overruled.

Mr. RAY.—We except to the ruling on the ground that during the progress of the trial the District Attorney said, you may show anything I may have done in this matter and thereby himself violated his oath as an attorney, in the attempt to violate [188—175] a confidential relation with his client.

The COURT.—Mr. Duggan's name having been brought before the jury after they were in the box, I hold that the privilege of the defendant was waived by him to the extent that he waived it himself by asking the question regarding it. The objection will be overruled, and exception allowed.

Q. Did Mr. Kelly ever come to you to advise with you regarding the conduct of his business there or running a cabaret or anything of that kind?

Mr. RAY.—We object to that for the same reason,—on the grounds I have stated.

Objection overruled; defendants allowed an exception.

A. Mr. Kelly never consulted me about running a cabaret or employing entertainers.

Mr. HURLEY.—That will be all.

(Testimony of Sherman Duggan.)

Cross-examination By Mr. RAY.

Q. I hand you a paper marked for identification Defendants' Exhibit No. 7 and ask you to state whether or not your signature is on that paper? (Handing witness paper.) A. Yes, sir.

Q. Mr. Duggan, it bears no date—can you tell the approximate date when that receipt was given?

A. Well, no, I don't know that I can. It wasn't very long before I went away I don't think.

Q. That would be around the first of August or the first of July or when? Can you fix any time?

A. About the middle of September, I should judge—I wouldn't be sure, however.

Mr. RAY.—I presume you have no objection to this going in?

Mr. DUGGAN.—None at all. [189—176]

Mr. RAY.—We offer it in evidence.

The receipt in question is admitted in evidence, without objection, marked Defendants' Exhibit No. 7, and reads as follows:

Defendant's Exhibit No. 7.

“Ragtime Kelly,

To Sherman Duggan, Debtor.

Location notices, powers of attorney, etc.

Also advice \$25.00

Paid

S. DUGGAN.”

Q. I call your attention to one item there, Ragtime Kelly to Sherman Duggan, Debtor, Location notices, powers of attorney, etc. Also advice—I

understand you to say that the advice shown to be paid for by the receipt was in no manner connected with the opening or advice relevant to the opening up of a cabaret—you heard Mr. Kelly's statement?

A. It was not, no, sir, and Kelly knows that.

Witness excused.

Government rests.

Mr. RAY.—I wish to make two motions.

WHEREUPON, the jury having been excused—

By Mr. RAY.—Comes now the defendant, Mrs. Grace Kelly, and moves the Court to instruct a verdict of Not Guilty on all the evidence submitted in the case, for the reason that said evidence as submitted in no way tends to connect the defendant, Mrs. Grace Kelly, with the offense charged in any of the eight counts in the indictment in said cause.

By Mr. RAY.—My second motion is as follows: Comes now the defendants, Mrs. Grace Kelly and Frank Kelly, and moves the [190—177] Court to instruct the jury to return a verdict of Not Guilty as to both defendants upon all the counts in the indictment in this case on the ground that the uncontradicted evidence submitted in this case shows that the witnesses Misses Hilkert came to Alaska under a contract of employment with the defendant Frank Kelly, entered into by means of telegraphic and cable communication, and that as a consideration of the contract and one element thereof, the witnesses, the Misses Hilkert, were to repay Frank Kelly, the defendant, the cost of transporta-

tion advanced by the said Kelly to the said Misses Hilkert, upon the basis of a deduction of \$5.00 per week from the contracted salary as set forth in such telegraphic communication, and that the advance of such transportation with the contract to repay as shown by the uncontradicted evidence in this case, does not come under the Interstate Commerce Regulations and is not a violation of the so-called White Slavery Act.

After argument both motions were by the Court denied and defendants allowed an exception to the rulings. (Jury returns.)

WHEREUPON, after argument by counsel, the Court delivered his instructions to the jury as follows: [191—178]

In the District Court for the Territory of Alaska,
Third Division.

No. 836—CRIMINAL.

UNITED STATES OF AMERICA

vs.

FRANK KELLY ~~and~~ MRS. GRACE KELLY,
Defendants.

Instructions to the Jury.

Gentlemen of the Jury:

The defendants, Frank Kelly and Mrs. Grace Kelly, are charged by this indictment in eight counts with the crime of causing girls to be transported in interstate commerce for purposes of prostitution or debauchery.

In the first count it is charged that on August 3, 1921, the defendants did wilfully, unlawfully, knowingly and feloniously cause two girls, named respectively Mildred Hilkert and Margaret Hilkert, to be transported from Seattle, Washington, to Anchorage, Alaska, on the steamship "Alameda," with the intent at the time on the part of said defendants to entice and induce said girls to become prostitutes, and to give themselves up to debauchery, and engage in other immoral practices.

The second count charges that said defendants aided and assisted in obtaining said transportation for said girls for the unlawful purposes stated in the first count.

The third count charges that said defendants procured tickets for said transportation of said girls for the unlawful purpose stated.

The fourth count charges that said defendants caused tickets to be procured for said girls for said transportation for the unlawful purposes stated.

The fifth count charges that said defendants assisted in procuring tickets for the transportation of said girls for the unlawful [192—179] purposes stated.

The sixth count charges that the said defendants induced and persuaded said girls to go from Seattle to Anchorage with the intent on the part of the said defendants that said girls should engage in the unlawful practices stated; and that they aided and assisted in causing said girls to be carried as already stated on the steamship "Alameda" from Seattle to Anchorage.

The seventh count charges that said defendants unlawfully caused said girls to be persuaded and enticed to go from Seattle to Anchorage, with the intent and purpose on the part of the defendants at the time that the said girls should engage in the immoral practices stated; and did thereby cause and aid and assist in causing the said girls to be so carried.

The eighth count charges that said defendants aided and assisted in persuading, inducing and enticing said girls to go from Seattle to Anchorage with the intent and purpose at the time on the part of the defendants that said girls should engage in immoral practices as stated, and that they thereby caused and assisted in causing the said girls to be carried and transported as passengers by a common carrier from Seattle to Anchorage for the unlawful purposes stated.

In order to find the defendants, or either of them, guilty of the offense charged in any count of the indictment, it is necessary for the prosecution to prove to your satisfaction, beyond all reasonable doubt, that such defendants, or either of them, did, on or about the day named, at Anchorage, Alaska, do and perform all of the acts charged in said count necessary to constitute the crime charged, as will hereafter be more fully explained to you.

It is not necessary for you to find that the offense charged in any count was committed, if you find that it was committed, by either of the defendants, on the day named in the indictment; it is sufficient if you find that such an offense was committed as

charged at any time within three years prior to the finding of the indictment. [193—180]

2.

You are instructed that the indictment in this case is a mere accusation or charge against the defendants and is not of itself any evidence of the defendants' guilt, and no juror should permit himself to be influenced against the defendants because the indictment has been returned against them.

3.

In this case, as in all criminal cases, the jury and Judge have separate functions to perform. It is your duty to hear all the evidence, all of which is addressed to you, and thereupon to decide and determine the questions of fact arising from the evidence. It is the duty of the Judge to decide the questions of law involved in the trial of the case, and the law makes it your duty to accept as law what is laid down as such by the Court in these instructions. But your power of judging the effect of the evidence is not arbitrary, but is to be exercised with legal discretion and in subordination to the rules of evidence.

4.

The jury are instructed that the law presumes every defendant in a criminal trial to be innocent until his guilt is proven to the satisfaction of the jury beyond all reasonable doubt. The burden of proving beyond all reasonable doubt every material allegation necessary to establish the defendants' guilt rests upon the prosecution throughout the

trial, and the burden of proof never shifts to the defendant. His presumption of innocence is a right guaranteed to him by law and must be given full force and effect by you until you become satisfied from a consideration of all the evidence in the case of his guilt beyond all reasonable doubt. [194—181]

5.

A reasonable doubt is such a doubt as may fairly and naturally arise in your minds after fully and fairly considering all the evidence in the case. It is that state of the case which leaves the minds of the jurors, after comparison and consideration of all the evidence, in such condition that they cannot say they feel an abiding conviction to a moral certainty of the guilt of the defendant. A moral certainty is not an absolute certainty, but such a certainty as excludes every reasonable hypothesis creating a doubt.

6.

As already stated, the defendants are charged in the indictment with the crime of transporting or aiding to transport the two girls named, in interstate commerce, from Seattle to Anchorage, with the intent to induce, entice and persuade said girls to become prostitutes, or to give themselves up to debauchery or other immoral practices. In order to find the defendants, or either of them, guilty under any count of the indictment, you must find it proved by the evidence beyond all reasonable doubt that the defendants, or either of them, did secure or aid in securing such transportation, as charged, with the

intent at the time of inducing, enticing or persuading said girls, or either of the said girls, to engage in said immoral practices, or some of said practices. If you find that the evidence proves beyond all reasonable doubt that one of the defendants is guilty as charged but fails to prove beyond all reasonable doubt that the other defendant is guilty as charged, you will return a verdict of guilty as to the one so proven guilty and a verdict of not guilty as to the other.

7.

To debauch is to corrupt in morals or principles; to lead astray [195—182] morally into dishonest and vicious practices; to corrupt; to lead into unchastity; to debauch. Debauchery, then, is an excessive indulgence of the body; licentiousness, drunkenness, corruption of innocence, taking up vicious habits. The term debauchery, as used in this statute, has an idea of sexual immorality; that is, it has the idea of a life which will lead eventually or tends to lead to sexual immorality; not necessarily drunkenness or immorality, but here it leads to the question in this case as to whether or not the influences in which these girls were surrounded by the employment which defendants called them to, did not tend to induce them to give themselves up to a condition of debauchery which eventually, necessarily and naturally would lead to a course of immorality sexually.

8.

If you find from the evidence that the defendants, or either of them, furnished or aided in furnishing

the transportation that brought the girls from Seattle to Anchorage, and caused it to be delivered to the girls for that purpose, the only remaining question for you to determine is the purpose or intent either defendant had in mind at the time in securing or aiding to secure said transportation; that is, did either defendant in so securing or aiding to secure said transportation, if you find that either defendant, or both, did secure or help to secure the same, have in mind the intent to bring said girls or either of them to Alaska with the purpose to induce, entice or persuade said girls, or either of them, to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice. If you find beyond all reasonable doubt that said defendants, or either of them, did bring or aid in bringing said girls to Alaska from Seattle for any of the unlawful purposes named, then you will find such defendant or defendants guilty upon the count or counts which you so find to be proved beyond all reasonable [196—183] doubt.

But unless you do so find beyond all reasonable doubt that the defendants, or either of them, had such intent at the time said transportation was furnished, you cannot return a verdict of guilty against them, or against the one, if either, who lacked such intent at the time of furnishing said transportation.

If you find from the evidence that the defendants, or either of them, formed the intent and purpose after the girls arrived in Anchorage to persuade

them to enter upon any of the unlawful and immoral practices set forth in the indictment, such finding will not authorize a conviction in this case, because the defendants are not charged in the indictment with any unlawful act done or purpose arising after the girls arrived in Anchorage.

All the testimony admitted in the case other than that designed to show that defendants secured or aided in securing the steamship tickets which were the means of transporting the girls to Anchorage from Seattle was admitted for the sole purpose of showing the intent on the part of the defendants or either of them, in furnishing said transportation, and it is not to be considered by you for any other purpose. You are instructed and cautioned that you are not to allow your minds to be influenced in the slightest degree by any of this evidence except for its bearing on the question of intent, at the time of securing the tickets, if you find it has any such bearing.

If you find that any of the evidence admitted by the court may tend to show that other offenses may have been committed by defendants, or either of them, in or about the Kelly pool-hall or building while the girls were there, such evidence is to be disregarded by you unless you find that it has some bearing upon the question of the intent of defendants in securing said transportation to bring the girls from Seattle to Anchorage, and then it is to be considered only so far as you may find it may affect the question of such intent. [197—184]

9.

It is your duty to give to the testimony of each

and all the witnesses such credit as you consider their testimony justly entitled to receive, and in doing so, you should not regard the remarks or expressions of counsel, unless the same are in conformity with the facts proved, or are reasonably deducible from such facts and the law as given to you in these instructions.

10.

In determining the credit you will give a witness and the weight and value you will attach to a witness' testimony, you should take into consideration the conduct and appearance of the witness upon the witness-stand; the interest of the witness, if any, in the result of the trial; the motives of the witness in testifying; the witness' relation to, or feeling for or against the defendants; the probability or the improbability of the witness' statements; the opportunity the witness had to observe and to be informed as to the matters respecting which such witness gives testimony, and the inclination of the witness to speak the truth, or otherwise, as to matters within the knowledge of such witness; and you should be slow to believe that any witness has testified falsely, but should try to reconcile the testimony of all the witnesses so as to give credit and weight to all the testimony, if possible. All these matters being taken into account, with all the other facts and circumstances given in evidence, it is your province to give to each witness such credit, and the testimony of each witness such value and weight, as you deem proper.

11.

You are instructed that the evidence is to be es-

estimated not only by its own intrinsic weight, but also according to the testimony which it is within the power of one side to produce and of the other [198—185] side to contradict, and, therefore, if the weaker and less satisfying evidence is produced when it appears that it was within the power of the party offering the same to produce stronger and more satisfying evidence, such evidence, if so offered, should be viewed with distrust.

12.

The law also makes it my duty to instruct you that you are not bound to find in conformity with the testimony of any number of witnesses which does not produce conviction in your minds, against a less number, or against a presumption or other evidence satisfying your minds.

You are also instructed that a witness who is wilfully false in one part of his testimony may be distrusted by you in other parts. If you find that any witness in this case has wilfully testified falsely in one part of his testimony, you are at liberty to reject all or any part of his testimony, but you are not bound to do so. You should reject the false part and may give such weight to other parts as you think they are entitled to receive.

13.

In this case the defendants have testified in their own behalf, as they had a lawful right to do. You are instructed that the credit to be given to their testimony, like that of all other witnesses, is left solely to the jury and you are to consider it the same as you would the testimony

of any other witness, provided, that you have a right in considering their testimony to consider also their interest in the event of the trial. [199—186]

14.

You are instructed that testimony introduced in evidence tending to prove former conviction of crime of a witness, or of a defendant testifying in his or her own behalf, is admissible only as affecting the credibility of such witness, that is to say, as assisting you in determining the weight you may give to such testimony; but, where an appeal from a conviction is taken from a justice court, or other inferior court, to a superior or appellate court, such conviction is not admissible in evidence, for a verdict of acquittal may be rendered on a retrial of the case; and you are cautioned and directed to cast aside from your minds and to give consideration in no degree whatever to the question propounded by the District Attorney to the defendant Frank Kelly as to such alleged former conviction.

15.

You are instructed that no evidence has been introduced in the case showing that the defendant Grace Kelly was concerned or involved in the acts constituting the charge contained in the first, third, fourth, sixth or seventh counts of the indictment. You will, therefore, return a verdict of Not Guilty as to Grace Kelly on the first, third, fourth, sixth and seventh counts of the indictment.

Before you can find the defendant Grace Kelly guilty on the second, fifth or eighth counts of the indictment, you must find it to be proved by the

evidence beyond all reasonable doubt that she aided or assisted in the offense charged in each of those counts respectively.

16.

If you find from the evidence that the negotiations which led to procuring the transportation that brought the Hilkert girls [200—187] from Seattle to Anchorage were wholly conducted by one of the defendants, and the prosecution has failed to prove beyond all reasonable doubt that the other defendant took any active or responsible part in securing, or aiding in securing said transportation, in such case it will be your duty to acquit that defendant on all the counts of the indictment. If you find, however, that such defendant actively advised the securing of the transportation, you may consider that fact in connection with all the other evidence in the case in determining the guilt or innocence of that defendant.

17.

You are instructed that you should not consider any evidence sought to be introduced but excluded by the Court, nor should you consider any evidence that has been stricken from the record by the Court, nor should you consider in reaching your verdict any knowledge or information known to you, not derived from the evidence as given by the witnesses upon the witness-stand.

You should not allow prejudice or sympathy to swerve you in reaching a verdict according to the evidence and the law as given to you by the Court.

Whatever verdict is warranted under the evi-

dence and the instructions of the Court, you should return, as you have sworn to do.

18.

If you find in this case that the defendants as a part of their contract of employment simply advanced steamship fare to the Hilkert girls in order to enable them to travel from Seattle, Washington to Anchorage, Alaska, and there to enter upon their contract of employment as entertainers, then your verdict will be not guilty as to both defendants upon each and every count in the indictment; [201—188] unless, however, you are satisfied beyond all reasonable doubt that at the time said transportation was provided, if it was so provided, by the defendants to the Hilkert girls, the defendant, Frank Kelly, and the defendant, Mrs. Grace Kelly, or either of them, furnished such transportation with the intent then and there to induce and entice the said Mildred Hilkert and Margaret Hilkert to become prostitutes and to give themselves up to debauchery and to engage in other immoral practices, or in any of such practices.

I have prepared two forms of verdict for you. You are not obliged to use verdicts prepared by the Court; you may write your own if you wish.

You have been instructed to return a verdict of not guilty as to Mrs. Kelly except as to the second, fifth and eighth counts of the indictment. You can use this verdict to find the defendant Frank Kelly either guilty or not guilty upon all the counts of the indictment and to find the defendant Mrs. Kelly not guilty upon all the counts

of the indictment or upon such counts as the Court has instructed you to return a verdict upon.

The other form of verdict takes up each count separately and you can fill that out according as you find guilty or not guilty upon each count of the indictment, bearing in mind the instructions given to you as to Mrs. Kelly.

In this case, gentlemen, unless it is objected to by either side, I am willing to send the exhibits to the jury. That has always been the custom until late years in this court. It is expressly provided in the civil code that all exhibits shall be sent to the jury but silent as to doing so in criminal proceedings and in view of the common-law rule that exhibits should not be sent in a criminal case, I have been reluctant heretofore to do it, but I find upon consulting the authorities that the matter, while the statute is silent, is wholly within [202—189] the discretion of the Court and in this case I think perhaps it would be better to send them, as I can see no ill result to anyone, either the Government or the defendants by so sending them. Therefore I send the indictment and the exhibits to the jury with the instructions.

Mr. RAY.—The defendants, Frank Kelly and Mrs. Grace Kelly, except to that portion of your Honor's instruction marked Number 5 on the question of reasonable doubt, the instruction reading as follows:

“A reasonable doubt is such a doubt as may fairly and naturally arise in your minds after fully and fairly considering all the evidence in the case. It is that state of the case which

leaves the minds of the jurors, after comparison and consideration of all the evidence, in such condition that they cannot say they feel an abiding conviction to a moral certainty of the guilt of the defendant. A moral certainty is not an absolute certainty, but such a certainty as excludes every reasonable hypothesis creating a doubt.

Exception allowed.

Mr. RAY.—Both defendants except the long instruction given by your Honor, which is numbered 8, next to the last clause reading: “You are instructed and cautioned that you are not to allow your minds to be influenced in the slightest degree by any of this evidence except for its bearing on the question of intent, at the time of securing the tickets, if you find it has any such bearing,” which should be stricken, the whole instruction reading as follows:

“If you find from the evidence that the defendants, or either of them, furnished or aided in furnishing the transportation that brought the girls from Seattle to Anchorage, and caused it to be delivered to the girls for [203—190] that purpose, the only remaining question for you to determine is the purpose or intent either defendant had in mind at the time of securing or aiding to secure said transportation; that is, did either defendant in so securing or aiding to secure said transportation, if you find that either defendant, or both, did secure or help to secure the same, have

in mind the intent to bring said girls or either of them to Alaska with the purpose to induce, entice or persuade said girls, or either of them, to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice. If you find beyond all reasonable doubt that said defendants, or either of them, did bring or aid in bringing said girls to Alaska from Seattle for any of the unlawful purposes named, then you will find such defendant or defendants guilty upon the count or counts which you so find to be proved beyond all reasonable doubt.

But unless you do so find beyond all reasonable doubt that the defendants, or either of them, had such intent at the time said transportation was furnished, you cannot return a verdict of guilty against them, or against the one, if either, who lacked such intent at the time of furnishing said transportation.

If you find from the evidence that the defendants, or either of them, formed the intent and purpose after the girls arrived in Anchorage to persuade them to enter upon any of the unlawful and immoral practices set forth in the indictment, such finding will not authorize a conviction in this case, because the defendants are not charged in the indictment with any unlawful act done or purpose arising after the girls arrived in Anchorage.

All the testimony admitted in the case other than that designed to show that defendants secured or aided in securing the steamship

tickets which were the means of transporting the girls to Anchorage from Seattle was admitted for the sole purpose of showing the intent on the part of the defendants, or either of them, in furnishing said transportation, and it is not to be considered by you for any other purpose. You are instructed and cautioned that you are not to allow your minds to be influenced in the slightest degree by any of this evidence except for its bearing on the question of intent, at the time of securing the tickets, if you find it has any such bearing.

If you find that any of the evidence admitted by the court may tend to show that other offenses may have been committed by defendants, or either of them, in or about the Kelly pool-hall or building while the girls were there, such evidence is to be disregarded by you unless you find that it has some bearing upon the question of the intent of defendants in securing said transportation to bring the girls from Seattle to Anchorage, and then it is to be considered only so far as you may find it may affect the question of such intent.

Exception allowed. [204—191]

Mr. RAY.—The defendants except to Instruction Number 11 given by your Honor and reading as follows:

“You are instructed that the evidence is to be estimated not only by its own intrinsic weight, but also according to the testimony which it is within the power of one side to produce and of the other side to contradict,

and, therefore, if the weaker and less satisfying evidence is produced when it appears that it was within the power of the party offering the same to produce stronger and more satisfying evidence, such evidence, if so offered, should be viewed with distrust."

Upon the ground that it is not incumbent upon the defendants, or either of them, to prove their innocence or produce any testimony.

Exception allowed.

Mr. RAY.—Defendants except to the refusal of the Court to give Defendants' Requested Instruction #15, reading as follows:

"You are instructed to return a verdict of not guilty on all the counts in the indictment contained as to the defendant, Mrs. Grace Kelly."

Exception allowed.

Mr. RAY.—Defendants except to the refusal of the Court to give Defendants' Requested Instruction #16, reading as follows:

"You are instructed to return a verdict of not guilty on all the counts in the indictment as to the defendant, Frank Kelly."

Exception allowed.

Mr. RAY.—Defendants except to the refusal of the Court to give Defendants' Requested Instruction #20 reading as follows:

"You are instructed that if you find from the evidence that the crime committed as charged in the indictment was committed by Mrs. Grace Kelly at the direction or with the concurrence of her husband, Frank Kelly,

he will be liable for criminal prosecution therefor, and he alone, and that the law will imply that it was committed under his coercion, if done in his presence and with his knowledge.” [205—192]

Exception allowed.

Mr. RAY.—Defendants except to the modification of Defendants’ Requested Instruction #13, as modified by your Honor, in striking therefrom the first five lines; you have given the balance of the instruction,—the Requested Instruction reading as follows:

“You are further instructed that the mere aiding of a person, such as the procuring of a railroad ticket or the lending of money to travel with which to purchase a ticket, does not come under the interstate commerce regulations and is not a violation of the so-called White Slave Act, and if you find in this case that the defendants as a part of their contract of employment simply advanced steamship fare to the Hilkert girls in order to enable them to travel from Seattle, Washington, to Anchorage, Alaska, and there to enter upon their contract of employment as entertainers, then your verdict will be not guilty as to both defendants as to each and every count in the indictment; unless, however, you are satisfied beyond all reasonable doubt that at the time said transportation was provided, if it was so provided, by the defendants to the Hilkert girls, the defendant,

Frank Kelly, and the defendant, Mrs. Grace Kelly, furnished such transportation with the intent then and there to induce and entice the said Mildred Hilkert and Margaret Hilkert to become prostitutes and to give themselves up to debauchery and to engage in other immoral practices.”

Exception allowed.

Mr. RAY.—Defendants except to the refusal of the Court to give Defendants’ Requested Instruction #32, reading as follows:

“You are instructed that contracts of employment, and other contracts, may be entered into by and through the means of telegraphic correspondence, that is to say, an offer of employment, made by telegraphic or cable communication, may be accepted by such means or mode of communication; and if you find, from a consideration of all the testimony submitted, that the Misses Hilkert came to Alaska in consequence of and in accordance with the telegraphic offer of the defendant Frank Kelly, and by the acceptance of such offer as embodied in said telegraphic or cable communication bound themselves to repay to the defendant Frank Kelly the cost of the transportation on the basis of a weekly deduction from the salary contracted to be paid, then, and in that event, you must find the defendant Frank Kelly, ‘not guilty’ as to all the counts in the indictment contained, for the reason that lending money with which to enable an-

other to travel, or to purchase transportation, does not come under interstate commerce regulations, and [206—193] is not a violation of the so-called White Slave Act.”

Exception allowed.

Mr. RAY.—Defendants except to the refusal of the Court to give Defendants’ Requested Instruction #23, reading as follows:

“You are instructed that if the Government adduced testimony as to isolated incidents that tended to show the atmosphere of the place where the girls worked, the same should not be considered by the jury unless the incidents tended to establish the gist of the charges in the indictment, that is, tended to show that the defendants intended on August 3, 1921, to bring the girls to Anchorage for purposes of prostitution and debauchery; and if the incidents related by the Government witnesses did not so show, the defendants were not required to answer them.”

Exception allowed.

WHEREUPON, the jury retired to deliberate on their verdict.

Case closed. [207—194]

I do hereby certify that I am the Official Court Reporter for the Third Division, Territory of Alaska; that as such I reported the proceedings had at the trial of the above-entitled cause, to wit: United States of America versus Frank Kelly and Mrs. Grace Kelly, No. 836 Criminal; that the foregoing transcript is a full, true and correct

transcript of the evidence introduced and the proceedings had at the trial of said cause.

Dated at Valdez, Alaska, this, the 25th day of May, 1922.

I. HAMBURGER. [208—195]

In the District Court for the Territory of Alaska,
Third Division.

No. 836—CRIMINAL.

UNITED STATES OF AMERICA

vs.

FRANK KELLY and MRS. GRACE KELLY,
Defendants.

Verdict.

We, the jury, duly impaneled and sworn in the above-entitled cause, do upon our oaths find the defendant Frank Kelly Guilty upon all the counts of the indictment; and the defendant Mrs. Grace Kelly Not Guilty upon all the counts of the indictment, and recommend the clemency of the Court for the defendant Frank Kelly.

Dated at Anchorage, Alaska, February 25th, 1922.

D. H. WILLIAMS,
Foreman.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 25, 1922. W. M. Cuddy, Clerk. [209]

In the District Court for the Territory of Alaska,
Third Division.

No. 836—CRIMINAL.

UNITED STATES OF AMERICA

vs.

FRANK KELLY.

Motion for Arrest of Judgment.

Comes now the defendant above named by his counsel and moves that no judgment be rendered upon the verdict of guilty of violation of the White Slave Traffic Act returned into court by the jury in the above-entitled cause at Anchorage, Alaska, upon the twenty-fifth day of February, 1922, at the regular term of court held thereat upon the grounds and for the following reasons, to wit:

I.

That all of the facts set out and contained in the indictment as brought by the grand jury convened for the Territory of Alaska, Third Division thereof, at the regular term of the District Court for said Territory and Division at Valdez, Alaska, in which Frank Kelly was indicted for the violation of the White Slave Traffic Act, are contained in Count 1 of said indictment; that any crime, if committed, was alleged in Count 1 of said indictment; and that all other counts, namely: Counts 2, 3, 4, 5, 6, 7, and 8 charge the same crime in varying language; that any verdict rendered is

purely and absolutely cumulative and contrary to law.

II.

That the evidence, and the whole thereof, was not sufficient in law upon which a verdict of guilty could be predicated.

III.

That the Trial Court refused to admit testimony offered by the defendant, and to which refusal proper exceptions were taken at the time, which testimony was offered then and there to disprove material allegations of the Government. [210]

IV.

That the Trial Court admitted testimony offered by the Government, to which exceptions were properly and duly taken by the defendant, which testimony was prejudicial to the interests of the defendant and tended to prejudice the minds of the jury as to the real issues involved.

V.

That testimony admitted by the Trial Court over the objections of the defendant tended to confuse the minds of the jury in that it tended to prove other crimes, not charged in the indictment, and which defendant could not have been called upon to meet in this cause.

MURPHY & COFFEY,

L. V. RAY,

Attorneys for Defendant.

True copy of the above and foregoing motion for arrest of judgment admitted by me, U. S. District

Attorney for the Third Division, Territory of Alaska, this 27th day of February, 1922.

HARRY G. McCAIN,
Asst. U. S. District Attorney.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Feb. 27, 1922. W. N. Cuddy, Clerk. [211]

In the District Court for the Territory of Alaska,
Third Division.

No. 836—CRIMINAL.

UNITED STATES OF AMERICA

vs.

FRANK KELLY.

Motion for New Trial.

Comes now the defendant above named, by his counsel, and moves that the verdict returned into court by the jury empaneled in the above cause finding the defendant guilty of violation of the White Slave Traffic Act to be set aside and a new trial be granted to said above-named defendant for the reasons and upon the following grounds, to wit:

I.

The insufficiency of the evidence to justify the verdict and that such verdict was against the law.

II.

Errors in law occurring at the trial of the cause and duly and timely excepted to by the defendant during the trial of said cause.

III.

The improper, irregular and unjustifiable conduct on the part of one of the jurors in that above-entitled cause in that he was permitted to be separated from the remaining jurors at a time subsequent to the charge and instructions by the Court to the jury and prior to a rendition of the verdict in open court; that during a time between the charge and instructions of the Court to the jury, and the rendering of the jury's verdict in open court, one of the jurors selected and empanelled in the above-entitled cause was permitted to become separated from the jury body, and while so separated to walk a distance of approximately six hundred (600) feet on the public and open streets of Anchorage, Alaska, between the place designated by the Court for the deliberations of the jury selected and empanelled in the above-entitled cause and the place at which the [212] above-entitled court was then and there holding its regular sessions; that such separation as mentioned aforesaid is in clear violation of Section 1024 of the Compiled Laws of the Territory of Alaska, 1913, wherein it is provided, in part, as follows:

“After hearing the charge the jury may either decide in the jury-box or retire for deliberation. If they retire they must be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict, or are discharged by the court. The officer shall, to the utmost of his ability,

keep the jury thus together separate from other persons, without drink, except water, and without food, except ordered by the court. He must not suffer any communication to be made to them, nor make any himself unless by the order of the court, except to ask them if they have agreed upon their verdict, and he shall not, before the verdict is rendered, communicate to any person the state of their deliberation or the verdict agreed on.”

Ia.

That testimony was admitted on the part of the Government over the timely objection of the defendant which tended to prove defendant guilty of various crimes not charged in the indictment. That such testimony offered and amended as aforesaid tended to prejudice the minds of the jury against the defendant and inferentially and by dangerous innuendo required defendant to answer charges, crimes and infractions of the law of which he had no notice by this indictment and with which he has not been charged.

Ib.

That testimony was admitted by the trial court adduced on the part of the Government over the timely objections of the defendant which by reason of its remoteness in point of time and place and circumstance from the crime charged in the indictment was clearly inadmissible; that the admission of such testimony was prejudicial to the interests of the defendant in the minds of the jurors as tending to confuse in their minds the real issues involved.

Ic.

That no testimony should have been offered and, if [213] offered, received by the Trial Court which would prove or which might prove the commission of any crimes or the infraction of any law not charged by this indictment against the said defendants.

Id.

That testimony as adduced by the Government was admitted by the Trial Court over the frequent, energetic and timely objections of the defendant which tended to prove wilful, malicious and felonious intent on the part of the defendant at the time when the Government alleges and states that he sent to places outside of the Territory of Alaska for certain entertainers and who later came to the Territory for the purpose of entertaining, and which intent was sought to be proven by testimony adduced by the Government proving facts too remote in point of time, persons, presence and circumstances which could be properly identified with the crime charged in the said indictment.

IIa.

That the Trial Court erred in admitting or receiving any testimony adduced by the Government over the timely objections of the defendant which tended to prove intent at any other time than the specified time when as alleged the defendant entered into negotiations whereby certain females were brought from places outside of the Territory into the Territory, to work as legitimate entertainers in defendant's place of business at Anchorage, Alaska, said negotiations having

been initiated on the first of August, 1921, and terminated on the third day of August, 1921.

IIb.

That the Trial Court erred in receiving or admitting any testimony regarding any person, incident, circumstance, happening or fact that did not tend to prove this specific intent.

IIc.

That testimony tending to prove such intent by alleged facts, persons, documentary evidence, happenings and [214] circumstances unconnected by remoteness of time with the crime charged were admitted by the trial court over the strenuous and timely objections of the defendant.

IId.

That testimony was admitted and received by the Trial Court over the timely objections of the defendant which was of a privileged and sacred character and which was offered by the United States District Attorney, Sherman Duggan, attorney for the United States in the above-entitled action; that the testimony offered was concerned with the privileged communication as defined by all elementary and statute law, such communication being between the defendant, Frank Kelly, client, and Sherman Duggan, attorney at law, duly admitted to and authorized to practice law in all of the courts of the Territory of Alaska, during the year 1921; that such privileged communication was testified to by the said Sherman Duggan, who, since the time of being consulted by the defendant, has been appointed and now is acting United States District

Attorney for the Third Division, Territory of Alaska; that such testimony was offered, received and admitted over and in the face of the violent and timely objections on the part of the defendant, who offered such objections upon the ground and for the reasons that no communication of this privileged nature and character should be or could be admitted in evidence in this trial over the objections and without the consent of the defendant, Frank Kelly.

IIe.

That misconduct on the part of one of the Government's attorneys, to wit, Julian Hurley, Assistant, prejudiced the minds of the jurors by his reference to testimony which was not permitted by the Court in the trial of the cause, i. e., that the said Hurley in addressing the jury said in effect that the girls, referring to the Government's prosecuting witnesses, were brought to Alaska for the purpose of selling liquor to the patrons of the [215] Kelly pool-hall and that the testimony in the case proved that the girls sold liquor and delivered it to the patrons of the said Kelly pool-hall; that such misconduct on the part of the said Assistant District Attorney tended to inflame and prejudice the minds of the jurors against the defendant.

MURPHY & COFFEY,
L. V. RAY,

Attorneys for Defendant.

True copy of the above and foregoing motion for new trial admitted by me, U. S. District Attor-

ney for the Third Division, Territory of Alaska, this 27th day of February, 1922.

HARRY G. McCAIN,
Assistant U. S. District Attorney.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 27, 1922. W. N. Cuddy, Clerk. [216]

In the District Court for the Territory of Alaska.

No. 836—CRIMINAL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK KELLY,

Defendant.

Affidavit in Support of Motion for New Trial.

United States of America,
Territory of Alaska,—ss.

Grace Kelly and Frank Kelly, being first duly sworn, separately and upon their oaths depose and say: That each is well acquainted with one Fred Waller, formerly of Anchorage, Alaska, but now outside of the Territory of Alaska; that the said Fred Waller is and was an important witness in the trial of the case of the United States vs. Frank Kelly and Grace Kelly; that prior to the commencement of said trial these affiants consulted with their counsel with reference to securing the pres-

ence of the said Fred Waller at the trial of the cause last above mentioned; that counsel at the time of said consultation informed these affiants that the presence of said Waller was necessary; that thereafter, and acting upon the advice of counsel, these affiants tried to find out the whereabouts or residence of the said Fred Waller so that a subpoena could be served upon him or his presence secured for attendance in said trial; that the efforts of these affiants were unavailing and at said time the said residence of Fred Waller could not be ascertained; that since the trial of said cause these affiants have ascertained the residence of the said Fred Waller, and that the said Fred Waller's presence can be secured if a new trial should be granted in the above-entitled cause; that if the said Fred Waller had been present at the recent trial he would have testified to the following effect: [217]

“THAT at the time the said Fred Waller, in Anchorage, Alaska, recommended Mildred and Margaret Hilkert to these affiants, that he, the said Fred Waller, was asked by both these affiants if the said Hilkert girls were good girls and that these affiants did not desire to have any girls work for them who were not of the best character; that affiants did not want girls who might become sporty or immoral as it had always been their experience that the latter-named class of girls were usually unsatisfactory employees; that if the said Fred Waller was present at said trial he would testify to the above conversation in effect and that he at

said time and place stated that the girls were absolutely good; that they were discreet and that these affiants would have no trouble with them if they were employed; that the said Margaret and Mildred Hilbert in answer to a question propounded to them on cross-examination in the trial of the case testified in effect: That they had only met the said named Fred Waller on one occasion at a friend's house; that if the said Fred Waller was present and testifying he would testify that he had frequently visited the said girls in their apartments and had frequently taken lunch with them in their apartments; that the class of testimony introduced in the trial of the cause herein mentioned was of such a nature that the same could not have been anticipated by these affiants, their counsel or anyone interested in the defendant's proper defense of their case, and that both affiants and counsel were wholly surprised by the nature of the same, further affiants sayeth not.

GRACE KELLY.

FRANK KELLY.

Subscribed and sworn to before me this 28th day of February, A. D. 1922, at Anchorage, Alaska.

JOHN F. COFFEY,

Notary Public for Alaska.

My commission expires May 13th, 1925.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 28, 1922. W. N. Cuddy, Clerk. J. Hamburger, Deputy.

In the District Court for the Territory of Alaska,
Third Division.

No. 836—CRIMINAL.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

FRANK KELLY,
Defendant.

Affidavit in Support of Motion for New Trial.

United States of America,
Territory of Alaska,—ss.

J. C. Murphy, being first duly sworn, upon his oath deposes and says: That he is a citizen of the United States and a resident of Anchorage, Alaska, over the age of twenty-one years; that he was one of the attorneys for the defendants in the case of the United States of America versus Frank Kelly and Grace Kelly charged with that violation of the Act of Congress commonly called the Mann Act; that during the selection of the jury to try the above-entitled case one D. H. Williams, of Anchorage, Alaska, was examined as a juror to try the above-mentioned cause; that during the examination of the said juror D. H. Williams he was asked in effect the question whether he had any bias or prejudice against the defendants or either of them and that said Juror D. H. Williams in answer to said question propounded to him answered in effect that he had no bias or prejudice

against the defendants or either of them; that relying upon the statement of the said Juror Williams he was accepted on the part of the defendants to try the said case; that since the trial of this case it has come to the knowledge of this affiant that during the fall of 1921, at about the time that the investigation was instituted which led up to the prosecution of these defendants that the said D. H. Williams in company with other people of Anchorage held a meeting at which the question was discussed of appealing directly to Governor Bone of Juneau, Alaska, to enforce certain laws which said persons believed were not being enforced in the City of Anchorage; [219] that at said time and place and in said discussion, with the said Juror Williams present, the business place and the business conducted by the defendant herein was discussed and that all including the said Juror Williams agreed that the same was a nuisance, a menace to the morals of the City of Anchorage and that the same should be closed and the proprietor prosecuted; that the said Juror D. H. Williams was biased and prejudiced against the said defendants and that if the true state of the said juror's mind was known to the defendants, his counsel or to the Court the said juror would not have been permitted to sit as a juror in the trial of said cause.

J. C. MURPHY.

Subscribed and sworn to before me this 28th day of February, 1922.

JOHN F. COFFEY,
Notary Public for Alaska.

My commission expires May 13, 1925.

Service of a copy of the foregoing affidavit, together with copies of the affidavit of Frank Kelly and Grace Kelly and the affidavit of John F. Coffey are hereby admitted this 28th day of February, 1922.

SHERMAN DUGGAN,
U. S. Dist. Atty., 3d Div. of Alaska.
By JULIENAS HURLEY,
His Assistant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 28, 1922. W. N. Cuddy, Clerk. By J. Hamburger, Deputy.
[220]

In the District Court for the Territory of Alaska,
Third Division.

No. —.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

FRANK KELLY and GRACE KELLY,
Defendants.

Affidavit of Misconduct of Juror.

United States of America,
Territory of Alaska,—ss.

John F. Coffey, being first duly sworn, upon his oath deposes and says: That he is a citizen of the United States and a resident of Anchorage, Alaska;

that he is well acquainted with one D. H. Williams; that the said D. H. Williams to this affiant's personal knowledge was selected as a juror in the United States District Court for the Third Division, Territory of Alaska to try the above-entitled case; that the said D. H. Williams was one of the said jurors who heard the testimony in the case; the arguments of counsel and the instructions of the Court and was present when the Clerk of Court read Section 1024 of the Compiled Laws of Alaska to the bailiffs who were to have said jury in charge and swear them to be guarded strictly by its provisions; that notwithstanding the law in the premises the said D. H. Williams did on the 25th day of February, 1922, at about the hour of noon of said day, leave and absent himself from his fellow jurors and go a long distance, to wit; from the old Elks Building to the Court house in Anchorage, Alaska, a distance of approximately 600 feet; that the route traversed by said D. H. Williams in going to and from the place where his fellow-jurors were in session is the principal thoroughfare in the city of Anchorage in the said city and that there was ample opportunity for the said Williams to converse with various people while on said trip; that this affiant saw the said D. H. Williams while making said trip on the date and at the time herein mentioned and that he was not [221] accompanied by any of his fellow jurors. That the said jury were in charge of two bailiffs and that it was absolutely unnecessary for the said D. H. Williams to make such trip; that in making

such trip the said D. H. Williams had received no instruction or permission of the Court although the said Court was then in session and available to the jury at all times through the bailiffs in charge.

JOHN F. COFFEY.

Subscribed and sworn to before me this 28th day of February, 1922.

J. C. MURPHY,

Notary Public for Alaska.

My commission expires June 10, 1922.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 28, 1922. W. N. Cuddy, Clerk. By J. Hamburger, Deputy. [222]

In the District Court for the Territory of Alaska,
Third Division.

No. —.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK KELLY,

Defendant.

Affidavit of Frank Kelly.

United States of America,
Territory of Alaska,—ss.

Frank Kelly, being first duly sworn, upon his oath deposes and says that he is the defendant above named; that late yesterday, March first, 1922, he

got into conversation with one N. O. Mullino of Anchorage, Alaska, that the said Mullino was a passenger on the S. S. "Alameda" on her trip to Alaska, on which the Misses Margaret and Mildred Hilkert first came to Anchorage; that the said N. O. Mullino made the accompanying affidavit of the conduct of the said girls while passengers on said trip; that the said N. O. Mullino signified his willingness to act as a witness in the part of the defendant if a new trial should be granted to him and that he believes that such testimony would be of great importance to show the character of the Government's principal witnesses and the weight that could be placed upon their testimony; that the evidence of the said N. O. Mullino could not be secured at the first trial.

FRANK KELLY.

Subscribed and sworn to before me this 2d day of March, 1922.

J. C. MURPHY,

Notary Public for Alaska.

My commission expires March 10, 1922.

Service accepted March 2d, 1922.

JULIENAS HURLEY,

Assist. U. S. Attorney.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Mar. 2, 1922. W. N. Cuddy, Clerk. By J. Hamburger, Deputy.
[223]

Affidavit of N. O. Mullino.

Territory of Alaska,
Knik Precinct,—ss.

N. O. Mullino, being first duly sworn, on oath deposes and says:

That about the 10th day of August, 1921, deponent left Seattle, State of Washington, and embarked on the steamship "Alameda" en route for Anchorage, Alaska. That among the passengers on said boat were two girls who were known on said boat as Margaret and Mildred, but whose full names are not known to deponent, but who were en route for Anchorage, Alaska, and who, upon arrival in said Anchorage, were engaged in singing, playing, dancing and entertaining in that certain pool-hall and amusement resort known as Ragtime Kelly's in said Anchorage. That while en route on said boat, and on one afternoon deponent went to his stateroom on said boat and there found the girl above mentioned named Mildred in company with the room-mate of the deponent, a commercial traveler known as Benny, whose full name is unknown to deponent. That when seen by deponent at this time in the stateroom of deponent said room-mate of deponent known as Benny was laying on the bed in said stateroom without any clothes and in a completely naked condition, and without any covering of bedclothes or other covering whatever, and said girl Mildred was laying on the bed with said Benny, dressed in her

usual apparel. That deponent was then asked to have a drink of whiskey by said occupants of said room above mentioned, which deponent accepted and immediately left said room.

That while en route on said boat, as aforesaid, deponent and the room-mate of deponent, Benny, were invited by said two girls before mentioned to the stateroom occupied by said girls to take a drink of whiskey, at about 8 o'clock in the evening, and while there said girl above mentioned named Margaret said to said Benny, "How would you like to see my ass?" to which said Benny replied in the affirmative, and then said Margaret raised her dress and exhibited [224] the bare skin of her buttock, upon doing which said Benny pinched her there with his fingers.

In witness whereof deponent has hereunto subscribed his name this 1st day of March, 1922, at Anchorage, Alaska.

N. O. MULLINO.

Subscribed and sworn to before me this 1st day of March, 1922.

ARTHUR G. THOMPSON,
Notary Public.

My commission expires May 6th, 1922.

Copies of the foregoing affidavit and accompanying affidavit of Frank Kelly is hereby admitted this 2d day of March, 1922.

JULIENAS HURLEY,
Assist. Dist. Attorney.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Mar. 2, 1922. W. N. Cuddy, Clerk. By J. Hamburger, Deputy. [225]

In the United States District Court, District and Territory of Alaska, Third Division. No. 836—Criminal. United States vs. Frank Kelly and Mrs. Grace Kelly. Affidavit of L. B. Horton in Opposition to Defendant's Motion for New Trial.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Mar. 1, 1922. W. N. Cuddy, Clerk. [226]

No. 836—CRIMINAL.

UNITED STATES

vs.

FRANK KELLY.

Affidavit of L. B. Horton in Answer to Defendant's Motion for New Trial.

L. B. Horton, being first duly sworn, deposes and states: That he is a citizen of the United States over the age of twenty-one years; that he has served as bailiff during the present term of court at Anchorage, Alaska, said duties being begun on the 14th day of February, A. D. 1922, and continuing until the present time; that he was sworn to act as bailiff during the deliberations of the trial jury in the case of the United States versus Frank Kelly and Mrs. Grace Kelly, and that he did so act.

Affiant further states that at about eleven-

fifteen o'clock A. M. on the twenty-fifth day of February, 1922, while the said jury was deliberating in said case at the Elk's old temple, some member of the said jury signalled for a bailiff as was according to custom and instructions; that affiant answered the signal and asked, according to law and instructions, whether or not the jury had arrived at a verdict; that affiant was informed that a verdict had been reached. Affiant further states that D. H. Williams expressed the desire of having a bailiff accompany him, the said D. H. Williams, to the United States courtroom to secure some papers; that affiant did so accompany the said D. H. Williams that during said trip to and from the said courtrooms the affiant was with and in charge of the said D. H. Williams at all times and that at no time did the said D. H. Williams converse with any person upon the subject of the trial or verdict or deliberations in said case or upon any other subject; that at no time was the said D. H. Williams at a greater distance from affiant than about six feet. Affiant further states that the remaining eleven jurors were left in charge of Bailiff Dietrich.

L. B. HORTON.

Subscribed and sworn to before me this 28th day of February, 1922.

HARRY G. McCAIN,
Notary Public for Alaska.

My commission expires on August 29th, 1925.

Due service of the foregoing affidavit is hereby accepted this 1st day of March 1922.

JOHN F. COFFEY.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Mar. 1, 1922. W. N. Cuddy, Clerk. By J. Hamburger, Deputy. [228]

In the United States District Court for the District and Territory of Alaska Third Division. No. 836—Criminal. United States vs. Frank Kelly and Mrs. Grace Kelly, Defendants. Affidavit of M. W. Diedrick, in Opposition to Defendant's Motion for a New Trial. [229]

No. 836—CRIMINAL.

UNITED STATES

vs.

FRANK KELLY and MRS. GRACE KELLY,
Defendants.

Affidavit of M. W. Diedrick in Opposition to Defendant's Motion for a New Trial.

M. W. Diedrick, being first duly sworn, deposes and states: That he is a citizen of the United States, residing at Anchorage, Alaska, and that he is over the age of twenty-one years; that on the 25th day of February, 1922, affiant was sworn to act as bailiff during the deliberations of the trial jury in the case of United States versus Frank Kelly and Mrs. Grace Kelly, and that he did so act.

Affiant further states that at about eleven-fifteen A. M., on the 25th day of February, while the trial jury in said case was deliberating on said case at the Elks old temple, affiant and bailiff Horton were notified by D. H. Williams that he, the said D. H. Williams, desired to go to the United States Courtrooms for the purpose of securing some papers which had been left there; that bailiff Horton left said Elks building in charge of said D. H. Williams. and also returned to said building in charge of said Williams. Affiant further states that during all the time said Williams and bailiff Horton were absent from said building, which time was approximately 20 minutes, affiant was in charge of the remaining eleven members of said jury; that neither during time said Williams and bailiff Horton were absent nor at any other time were the members of said jury allowed to converse or communicate with any person or persons other than themselves.

M. W. DEIDRICK.

Subscribed and sworn to before me this 28th day of February, 1922.

HARRY G. McCAIN,
Notary Public for Alaska.

My commission expires on August 29th, 1925.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Mar. 1, 1922. W. N. Cuddy, Clerk. By J. Hamburger, Deputy.
[230]

Due service of the foregoing affidavit is hereby accepted this 1st day of March, 1922.

JOHN F. COFFEY. [231]

In the United States District Court, District and
Territory of Alaska, Third Division.

No. 836—CRIMINAL.

UNITED STATES

vs.

FRANK KELLY and MRS. GRACE KELLY.

Affidavit of D. H. Williams in Answer to Defendant's Motion for New Trial. [232]

United States of America,
Territory of Alaska,
City of Anchorage,—ss.

D. H. Williams, being first duly sworn, deposes and states: That he is a citizen of the United States and a resident of the City of Anchorage, Alaska, and over the age of twenty-one years; that he was summoned to serve on the regular panel of jurors in the United States District Court for the Territory and District of Alaska, Third Division at Anchorage, on the fourteenth day of February, A. D. 1922; that he appeared on that day in the said court and was qualified and sworn to serve on said panel.

Affiant states further that he was called, qualified, accepted, and sworn to serve on the trial jury in said court in the case of the United States vs. Frank Kelly and Mrs. Grace Kelly, said case being Criminal Case No. 836 on the Criminal Docket of said Court; that he did so serve and that he was chosen and acted as foreman of said jury; affiant states further that said trial jury did by

their verdict find the defendant Grace Kelly "not guilty" on all counts, and the defendant Frank Kelly "guilty" on all counts; that during the deliberations in said case the members of said jury were never separated but were kept strictly together until after a verdict had been agreed on by all the members of the jury; that when the jury were moved from said courtroom to the Elks old building proper forms of verdict were inadvertently left at the United States Courtroom in Anchorage; that affiant, accompanied by a bailiff, after the verdict was reached and agreed to by all the members of the jury, went to said courtrooms and got the verdict forms upon which to submit the verdict of said jury; that during the time affiant was so doing he conversed with no person in reference to the deliberations or verdict of said jury; that during the time that affiant was away from the other members of the jury said other members were also [233] in the charge of a bailiff. Affiant therefore states that, to his knowledge, no harm or prejudice was done to the defendants or either of them on account of said transaction.

D. H. WILLIAMS.

Subscribed and sworn to before me this 27th day of February, A. D. 1922.

HARRY G. McCAIN,
Notary Public for Alaska.

My commission expires Aug. 29, 1925.

Due service of the foregoing affidavit is hereby accepted this 1st day of March, 1922.

JOHN F. COFFEY.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Mar. 1, 1922. W. N. Cuddy, Clerk. By J. Hamburger, Deputy. [234]

In the United States District Court, District and Territory of Alaska, Third Division.

No. 836—CRIMINAL.

UNITED STATES OF AMERICA

vs.

FRANK KELLY and MRS. GRACE KELLY.

Affidavit in Answer to Defendant's Motion for a New Trial.

United States of America,
Territory of Alaska,—ss.

I, D. H. Williams, being first duly sworn, upon oath, depose and say:

That I have read the affidavit of J. C. Murphy filed in the above-entitled court and cause in support of a motion filed on behalf of the above-named defendant Frank Kelly for a new trial; that I was not biased or prejudiced against said defendants or either of them at the time I was accepted as a juror in the above-entitled action and had no opinion as to the guilt or innocence of the said defendants or either of them at the time I was so accepted as a juror in this case; that I never attended a meeting during the fall of 1921 at which I discussed and agreed that the business place and the business

conducted by the defendants or either of them was a nuisance or a menace to the morals of the City of Anchorage or that the same should be closed or the proprietor prosecuted; that I never attended a meeting of any kind in the fall of 1921 at which the question of appealing to Governor Bone was discussed; that I never attended any such meeting as set forth and described in the said affidavit of the said J. C. Murphy.

D. H. WILLIAMS.

Subscribed and sworn to before me this 1st day of February, 1922.

W. N. CUDDY,
Clerk of Court.

By J. Hamburger,
Deputy. [235]

Service accepted this 2d day of March, 1922.

JOHN F. COFFEY.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Mar. 2, 1922. W. N. Cuddy, Clerk. By J. Hamburger, Deputy. [236]

Journal No. A-2.

District Court, Territory of Alaska, Third Division.
Page 231.November 28, 1921, Term of Court, Anchorage,
Alaska, March 2, 1922—29th Court Day.

No. 836—CRIMINAL.

UNITED STATES OF AMERICA

vs.

FRANK KELLY,

Defendant.

**Decision on Motion for New Trial and on Motion
for Arrest of Judgment.**

Now, on this day, this matter came before the Court, on the motion of defendant for a new trial and his motion for arrest of judgment, same having been previously argued and taken under advisement by the Court:

The Government was represented by Julien Hurley, Esq., Assistant United States Attorney, the defendant was personally present and represented by his attorneys Messrs. Murphy & Coffey:
WHEREUPON—

IT IS ORDERED that defendant's motion for a new trial and defendant's motion for arrest of judgment be and the same hereby are denied.

It is further **ORDERED** that Friday morning at ten o'clock, March 3, 1922, be and the same is hereby fixed as the time when the said defendant shall receive his sentence on the verdict of Guilty returned by the Jury in said cause.

To which the defendant excepted and the exception was allowed by the Court. [237]

In the District Court for the Territory of Alaska,
Third Division.

No. 836—CRIMINAL.

UNITED STATES OF AMERICA

vs.

FRANK KELLY,

Defendant.

Judgment and Sentence.

Comes now the United States Attorney, by his Assistant Julien Hurley, Esq.; came also the defendant in person and by his attorneys Messrs. Murphy & Coffey:

And it appearing to the Court that the defendant herein was heretofore, to wit, on the 25th day of February, 1922, found guilty of the crime of causing girls to be transported in interstate commerce for the purposes of prostitution:

And the defendant being asked if he has anything to say why the sentence of the Court should not now be pronounced on the said verdict of guilty and answering nothing in that behalf:

IT IS ORDERED, That you, Frank Kelly, defendant in above cause, be imprisoned in the Federal Jail at Anchorage, Alaska, for the period of nine months on each of the eight counts of the indictment in this cause, the said sentences on all of the eight counts to run concurrently, and that you

be committed to the custody of the United States Marshal for the Third Division, Territory of Alaska, until such sentences are fully satisfied.

Dated at Anchorage, Alaska, March 3, 1922.

E. E. RITCHIE,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division Mar. 30, 1922. W. N. Cuddy, Clerk. I. Hamburger, Deputy. [238]

In the District Court for the Territory of Alaska,
Third Division.

No. 836—CRIMINAL.

UNITED STATES OF AMERICA

vs.

FRANK KELLY,

Defendant.

Statement of Court in Explanation of Sentence.

The White Slave Traffic Act provides that any person guilty of any of the practices denounced by the law "shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding Five Thousand Dollars or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the Court." As a violation of the Act is expressly made a felony, that might seem to imply that in case the sentence includes imprisonment, the place of confinement should be a penitentiary, but as the Act does not require imprisonment as the

penalty, or part of it, it is fair to assume that the place of imprisonment, if any, is prescribed by the sentence, is left to the discretion of the Court.

In this case the jury recommended the defendant to clemency. It is also the opinion of the Trial Judge that it is at least doubtful whether the evidence was sufficient to justify a verdict of guilty against the defendant.

For these reasons the Court fixes the penalty at imprisonment in the Federal Jail at Anchorage, Alaska, rather than in the penitentiary at McNeil's Island. [239]

In the District Court for the Territory of Alaska,
Third Division.

No. —.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK KELLY,

Defendant.

Motion to Vacate Judgment and Sentence.

Comes now the above-named defendant, Frank Kelly, and moves the above-entitled court to vacate the sentence and judgment heretofore rendered and pronounced in said cause, —, in that said judgment and sentence; based upon the verdict of a jury impaneled in said cause, was and is void.

This motion is based upon the records and files in said cause, and upon the affidavits of Charles A. Coates, Jeremiah C. Murphy, Mrs. Grace Kelly

and Father — Markham, which affidavits accompany this motion and are made a part thereof.

Dated at Anchorage, Alaska, this 30 day of September, 1922.

L. V. RAY and
J. C. MURPHY,
Attorneys for Defendant Frank Kelly.

Service of a copy of the foregoing notice together with copies of the affidavits of Charles A. Coates, Mrs. Grace Kelly and Jeremiah C. Murphy in support of same is hereby admitted this 30th day of September, 1922.

SHERMAN DUGGAN,
U. S. Dist. Attorney of Alaska.
By JULIENAS HURLEY,
His Assistant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Sept. 30, 1922. W. N. Cuddy, Clerk. By Robert S. Bragaw, Deputy. [240]

In the District Court for the Territory of Alaska,
Third Division.

No. —.

UNITED STATES OF AMERICA,
Plaintiff,
vs.
FRANK KELLY,
Defendant.

Affidavit of Charles A. Coates.

United States of America,
Territory of Alaska,—ss.

Charles A. Coates, being first duly sworn, upon his oath deposes and says: That he is a citizen of the United States and a resident of Anchorage, Alaska, over the age of twenty-one years; that he is well acquainted with one D. H. Williams who conducts an undertaking establishment in the City of Anchorage, Alaska; that the said D. H. Williams served as a trial juror in a case in the District Court of Anchorage, Alaska, tried during the February Term of 1922, in which the said above-named defendant together with said defendant's wife, one Grace Kelly were tried for the offense commonly known as the "White Slave Traffic Act," Chapter 14 of the Criminal Statutes, Compiled Laws of Alaska, which said trial resulted in a verdict of acquittal against the said Grace Kelly and one of conviction against the said Frank Kelly; that this affiant was well acquainted with the said D. H. Williams, in Portland, Oregon, on or about the years 1903 and 1904; that the said D. H. Williams, above referred to was at that time acting as Secretary for the "Leather Workers Union"; that while acting as in said capacity, he, the said D. H. Williams, embezzled certain funds belonging to the said above-named organization; that this affiant was a member of the said same Union at this said time; that the said D. H. Williams was thereafter apprehended and sentenced to serve a term in the

that the crime for which the said D. H. Williams Oregon State Penitentiary located at Salem, Oregon; served in the said institution at Salem, Oregon, was a felony, but whether the said D. H. Williams was tried for said offense or plead guilty to the charge this affiant is unable to say; that this affiant is positive in his statements and that he recognized the said D. H. Williams as one and the same party who was the said Secretary in Anchorage, Alaska; further affiant sayeth not.

CHARLES A. COATES.

Subscribed and sworn to before me this 19th day of August, 1922.

J. C. MURPHY,

Notary Public for Alaska.

My commission expires June 10th, 1926. [241]

In the District Court for the Territory of Alaska,
Third Division.

No. —.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK KELLY,

Defendant.

**Affidavit of Mrs. Grace Kelly in Support of Motion
to Vacate Judgment.**

United States of America,
Territory of Alaska,—ss.

Mrs. Grace Kelly, being first duly sworn, on oath deposes and says: That she is the wife of the de-

fendant Frank Kelly, above named; that she was a codefendant in the trial of the cause, which trial was held at Anchorage, Alaska, in the latter part of the month of February, 1922, at a term of the District Court of the Territory of Alaska, Third Division, at which Honorable E. E. Ritchie presided as Judge and a jury was selected and impaneled; that said trial resulted in a verdict of "Not Guilty" as far as this affiant is concerned; that the defendant Frank Kelly was found "Guilty" upon all the eight counts that said indictment contained; that said verdict so rendered was a result of passion and prejudice and was not a fair and impartial verdict. That of the jurors' one D. H. Williams qualified and in response to questions propounded to him by counsel respectively for the defendant and for the Government stated that he the said Williams had no information or knowledge of any fact relative to the offense or offenses charged against the said defendants Kelly, had expressed no opinion, had formed no opinion and was without prejudice as to either the defendants or the Government of the United States; that the said Juror Williams had been interrogated by a member of the United States Attorney's office and asked whether or not he had ever been convicted of a felony, and in response to said inquiry replied in the negative; that since the trial of said [242] cause and the entry of judgment upon the verdict of said jury this affiant has ascertained that the said D. H. Williams was either convicted of a felony or plead guilty to the commission of a felony and was sentenced to serve a period of one to five years

in the Oregon State Penitentiary at Salem, Oregon, and that in execution of said sentence the said Juror D. H. Williams did serve at said penitentiary for a period of one year at least; that in an effort to verify the information thus obtained affiant caused to be sent forward to the United States Attorney's office for the Third Division, Territory of Alaska, a certain photograph of the said D. H. Williams for the purpose of identification; that said photograph affiant has been informed by a member of said United States District Attorney's office has been received but affiant has been unable to obtain such photograph or be permitted to have identification made of the said D. H. Williams with the subject of said photograph; that the record of said conviction as shown by the prison register is as follows:

“Name—Williams, D. H. Prison No. 6062.

Alias

County—Multnomah.

Crime—Lcy. by embezzlement.

Received—January 17, 1910.

Min. Sent. Expires—January 17, 1911.

Sentence—5 years.

Ind't Sentence—1 to 10 years.

Occupation—Leather Worker.

Sentencing Judge—John B. Cleland.

Prosecuting Attorney—J. J. Fitzgerald, Deputy.

Sheriff—F. L. Stevens.

Prior _____.

(Parole Form 2)

Over.

(Reverse Side.)

Paroled June 15, 1911.

4-24-13 Rec. that citizenship be restored.”

That affiant has also ascertained and therefore states upon oath that prior to the latter part of August in the year 1921 and prior to the date upon which it is alleged the defendants caused transportation to be furnished to the prosecuting [243] witnesses who testified in said cause, that at a meeting held at the office of said D. H. Williams at Anchorage, Alaska, at which were present the Reverend Mr. Marple, Pastor of a Church in Anchorage, Alaska, the Reverend Father Markham, Pastor of a church in Anchorage, Alaska, the Reverend Mr. Hughes, Pastor of a Church in Anchorage, Alaska, and D. H. Williams, Superintendent of a Sunday-school at Anchorage, Alaska, a general discussion was had relative to conditions regarding the morality and public health in the town of Anchorage, Alaska; that at said meeting the amusement parlors conducted by the defendant Frank Kelly, known as Robart's Pool Hall, came up for discussion, and as a result of the discussion there had the said D. H. Williams was deputized and authorized by the representatives of civic government at said meeting assembled to ascertain what steps could be taken to condemn or otherwise put out of business said amusement resort so conducted as aforesaid by the said defendant Frank Kelly, upon the ground that same was noisy and tended to disturb the peace and quietude of the

people residing near by; that the said D. H. Williams was a frequent visitor and patron of said place of business so conducted by said defendant Frank Kelly, playing pool and billiards and bowling, and professed extreme friendship toward the defendant Frank Kelly and never at any time expressed to the said defendant Frank Kelly or to affiant that the amusement resort was run in other than an orderly manner and was not at all objectionable to the church people of the town of Anchorage; that affiant is informed by her husband's counsel that a person convicted of a felony cannot sit upon a jury in an Alaskan Court, and the participation of such a person so disqualified as a juror in the trial of the case renders the said trial void.

That your affiant has further information, proof of which she submits in support hereof, that the witness Mildred Hilkert, one of the persons whom it is alleged the defendants [244] Kelly caused to be transported in violation of the "Mann Act" was at the time of said trial a bigamist, being then and there married to two men, that is to say, that the said Mildred Hilkert was married on the 5th day of November, 1921, at Valdez, Alaska, to one Huling F. Bowles, whereas a former marriage had been celebrated by the said Mildred Hilkert, then Mildred F. Graham, on the 18th day of May, 1915, to Albert H. Hilkert, said marriage taking place in the City of Seattle, State of Washington, and that on February 14th, 1922, in the Courts of the County of King, State of Washington, said Albert H. Hilkert filed a suit for divorce against said

Mildred F. Graham Hilkert, and that as far as affiant is able to ascertain said suit for divorce is still pending; that the facts herein stated are evidenced by a copy of the marriage certificate between the said Albert H. Hilkert and Mildred F. Graham, and copy of the marriage certificate between Huling F. Bowles and Mildred Hilkert, which said copies are hereto attached to this affidavit.

MRS. GRACE KELLY.

Subscribed and sworn to before me this 27th day of September, 1922.

Notary Public for Alaska.

My commission expires Sept. 24, 1925.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Sept. 30, 1922. W. N. Cuddy, Clerk. By Robert S. Bragaw, Deputy. [245]

COPY.

No. 46855.

MARRIAGE CERTIFICATE.

No. 50793.

State of Washington,
County of King,—ss.

THIS CERTIFIES That the undersigned a Baptist Minister by authority of a License bearing date the 18th day of May, A. D. 1915, and issued by the County Auditor of the County of King, did on the 18th day of May, A. D. 1915 at the City of Seattle, County and State aforesaid join in LAW-

FUL WEDLOCK Albert H. Hilkert of the County of Ashtobula, Ohio, and Mildred F. Graham of the County of King, with their mutual assent, in the presence of Mrs. G. Greene and M. H. Cushing, Witnesses.

IN TESTIMONY WHEREOF, Witness the signatures of the parties to said ceremony, the Witnesses and myself, this 18th day of May A. D. 1915.

Witnesses:	Parties:	Officiating Clergymen or Officer:
Mrs. G. Greene	A. W. Hilkert.	A. E. Greene,
M. H. Cushing	Mildred F. Graham.	Clergyman
	P. O. Address, Seattle, Washington.	

State of Washington,
County of King,—ss.

I, George A. Grant, County Clerk of King County and *ex officio* Clerk of the Superior Court of the State of Washington for the County of King, do hereby certify that the foregoing is a true and correct copy of the original marriage certificate of A. W. Hilkert and Mildred F. Graham as the same appears in Volume A-5, Page 31 of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of the said Superior Court this 27th day of June A. D. 1922.

[Seal]

GEORGE A. GRANT,
County Clerk.

By H. C. Gordon,
Deputy. [246]

In the District Court for the Territory of Alaska,
Third Division.

No. —.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK KELLY,

Defendant.

**Affidavit of Jeremiah C. Murphy in Support of
Motion to Vacate Judgment.**

United States of America,
Territory of Alaska,—ss.

Jeremiah C. Murphy, being first duly sworn, on oath deposes and says: That he is a citizen of the United States, and a resident of the Territory of Alaska, and over the age of twenty-one years; that he was one of the Attorneys for the defendant in the above-entitled case; that he is well acquainted with one of the jurors who sat in said case, D. H. Williams; that the said D. H. Williams had on many prior occasions in Anchorage, Alaska, acted as a juror in the Commissioner's Court; that this affiant had no knowledge at the time the said Juror Williams was selected as one of the jurors to try the above-entitled case that the said Williams had previously thereto served a term in the penitentiary at Salem, Oregon, for a felony committed in the last-named state; that affiant examined said Williams as to his qualifications to act as a juror in the above-entitled case and that the said

Williams stated in said examination that he was not acquainted with the facts concerned in the case and that if he was selected as a juror he would give the defendants a fair and impartial trial; that at the said time of said examination this affiant was not aware of said Williams' prior conviction as above set out and did not learn of said fact until after the verdict in the said case had been reached.

JEREMIAH C. MURPHY.

Subscribed and sworn to before me this 27th day of September, 1922.

LEOPOLD DAVID,

Notary Public for Alaska.

My commission expires Sept. 24, 1925. [247]

Affidavit of Rev. A. J. Markham.

State of Idaho,

County of Bonneville,—ss.

Rev. A. J. Markham, of Idaho Falls, Bonneville County, Idaho, being first duly sworn, upon his oath deposes and says: That during the summer of 1921 he was at Anchorage, Alaska, and was present at a certain meeting held in the said town of Anchorage some time during the summer of 1921, at which meeting there were present besides himself one D. H. Williams, Rev. Marple, Rev. Hughes of the Episcopal Church and Mr. Moyer of the Bank of Alaska, and that at said meeting the question of the sale of intoxicating liquors in Anchorage was discussed; that one of the places where it was said that intoxicating liquors was being sold was that of Ragtime Kelly.

Affiant further states that he is not positive as to the date of said meeting, but it was a short time previous to the visit by the Governor of Alaska to Anchorage during said season.

Dated at Idaho Falls, Idaho, this twenty-eighth day of September, 1922.

REV. A. J. MARKHAM.

Subscribed and sworn to before me this twenty-eighth day of September, 1922.

A. U. SCOTT,

Notary Public, Residing at Idaho Falls, Idaho.

My commission expires June 16th, 1923.

Service of a copy of the foregoing affidavit admitted this 10th day of Nov., 1922.

JULIENAS HURLEY,

Assist. Dist. Attorney.

[Endorsed] Filed in the District Court, Territory of Alaska, Third Division. Nov. 10, 1922. W. N. Cuddy, Clerk. [248]

In the District Court for the Territory of Alaska,
Third Division.

No. —.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK KELLY,

Defendant.

Affidavit of Rev. W. S. Marple.

United States of America,
Territory of Alaska,—ss.

I, W. S. Marple, being first duly sworn, upon oath depose and say that I never attended a meeting at the office or residence of D. H. Williams where the liquor question or the defendant Frank Kelly or his amusement parlor in the City of Anchorage was discussed and I did not attend a meeting in Anchorage, Alaska, at which D. H. Williams, Rev. Markham, Rev. Hughes and Mr. Moyer were present when the question of the sale of intoxicating liquor in Anchorage was discussed or the defendant or his place of business was discussed; that the only meeting at which were present Rev. Hughes and Rev. Markham and myself where the question of the sale of intoxicating liquor in Anchorage was discussed that I remember of attending was a meeting at my home and D. H. Williams was not present at that meeting.

W. S. MARPLE.

Subscribed and sworn to before me this 11th day of December, 1922.

IVA DUGGAN,

Notary Public for Alaska.

My commission expires Sept. 13, 1925.

Due service of a copy of the foregoing affidavit is admitted this 12th day of December, 1922.

RAY & DAVID,

Of Attorneys for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Dec. 12, 1922. W. N. Cuddy, Clerk. [249]

Journal A-3.

District Court, Territory of Alaska, Third Division.

Page 93.

November 10, 1922, Term of Court, Anchorage, Alaska, December 29, 1922—41st Court Day.

No. 836—CRIMINAL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK KELLY,

Defendant.

Order Denying Motion to Vacate Judgment.

This matter came on for hearing on motion of Leopold David, Esq., and J. C. Murphy, Esq., counsel for defendant, to vacate judgment, the plaintiff being represented by Sherman Duggan, Esq., United States Attorney; the defendant being present in person and represented by Messrs. David and Murphy.

WHEREUPON after argument, the motion was denied.

To which the defendant excepted and the exception was allowed by the Court. [250]

In the District Court, Territory of Alaska, Third
Division.

No. 836—CRIMINAL.

UNITED STATES OF AMERICA

vs.

FRANK KELLY,

Defendant.

Stipulation Regarding Original Exhibits.

IT IS HEREBY STIPULATED AND AGREED by and between Sherman Duggan, United States Attorney, and Aaron E. Rucker, one of the attorneys for defendant, as follows:

1. As to Plaintiff's Exhibit "G," being a steamship ticket issued by the Alaska Steamship Company to Mildred Hilkert, No. 1870, it is agreed that in making up copy of said exhibit on appeal the liability clauses and regulations on face of said ticket regarding presentation of claims, numbered 1 to 17, inclusive, may be omitted from the printed copy of said exhibit.

2. As to plaintiff's Exhibit "H," being a steamship ticket issued by the Alaska Steamship Company to Margaret Hilkert, No. 1871, it is agreed that the liability clauses and regulations for the presentation of claims on the face of said ticket, numbered 1 to 17, inclusive, may be omitted from the copy of said exhibit in making up record on appeal.

3. As to Plaintiff's Exhibit "M," it is agreed that in the copying and printing of such exhibit on appeal the heading of one sheet shall be copied and thereafter it shall only be necessary to copy the entries and lines following message numbers 44, 64, and 96, which said exhibit is the delivery and receipt sheet of the United States Army Telegraph Lines.

Dated at Valdez, Alaska, this 23d day of January, 1923.

SHERMAN DUGGAN,
United States Attorney, Third Division. Ter-
ritory of Alaska.

AARON E. RUCKER,
One of Attorneys for Defendant.

[Endorsed]: Filed in the District Court, Ter-
ritory of Alaska, Third Division. Jan. 23, 1923.
W. N. Cuddy, Clerk. [251]

In the District Court for the Territory of Alaska,
Third Division.

No. 836—CRIMINAL.

UNITED STATES OF AMERICA

vs.

FRANK KELLY,

Defendant.

Order Regarding Original Exhibits.

This matter came on to be heard by the Court upon the stipulation entered into by and between

Sherman Duggan, United States Attorney, and Aaron E. Rucker, one of the attorneys for defendant, concerning certain original exhibits introduced by the plaintiff at the trial of the above-entitled cause. It appearing to the Court that said stipulation provided for the incorporation into the record of all that is essential and material of such exhibits, and the Court being fully advised in the premises,

IT IS ORDERED that the following portions of Plaintiff's Exhibits "G," "H," and "M" shall be admitted and accepted as all that is essential of said exhibits to make up the record upon writ of error:

Plaintiff's Exhibit "G."

"ALASKA STEAMSHIP COMPANY.

Good for One First Class Passage
as Indicated.

When Properly Signed and Witnessed.

Ticket and coupon or coupons attached subject to limitation as specified thereon and to the following contract which purchaser agrees to:

Signature: MILDRED HILKERT, Purchaser.

Witness: W. H. LUDIN, Ticket Agent.

JOHN H. BUNCH,
General Freight and Passenger Agent.

ALASKA STEAMSHIP CO.

SEATTLE (City)

to

KNIK ANCHORAGE

1870

Baggage Checked

B C

S. S. ALAMEDA, VOY. 193

Room 63

Berth 1

(Endorsements)

War Tax Paid \$5.80.

Issued in Exchange D N K A.

72.50.

Alaska Steamship Co.

Aug 4, 1921.

City Ticket Office. [252]

Plaintiff's Exhibit "H."

"ALASKA STEAMSHIP COMPANY.

Good for One First Class Passage

As Indicated

When Properly Signed and Witnessed

Ticket and coupon or coupons attached subject to limitation as specified thereon and to the following contract which purchaser agrees to:

Signature: MARGARET HILKERT, Purchaser.

Witness: W. H. LUDIN, Ticket Agent.

JOHN H. BUNCH,

General Freight and Passenger Agent.

ALASKA STEAMSHIP CO.

SEATTLE (City)

to

KNIK ANCHORAGE,

1871

Baggage Checked

B C

S. S. ALAMEDA, VOY. 193

Room 63

Berth 2

(Endorsements)

War Tax Paid \$5.80.

Issued in Exchange D N K A.

72.50.

Alaska Steamship Co.

Aug 4, 1921.

City Ticket Office.

Plaintiff's Exhibit "M."

"UNITED STATES MILITARY LINES.

Office at Seattle, Wash.

Delivery Sheet No.

Dated Aug. 3, 1921

Message Number	Time Sent Out	Address	Charges	Received for by	Time Delivery
64		Mildred Hilkert	Pd.	Miss Mosson	3:10 P
96	6 PM.	Mildred Hilkert	NL	Mildred Hilkert	C
44		Henrioud	NL	W. H. Ludin	8:47 A. M.

Dated at Valdez, Alaska, this 3d day of February, 1923.

By the Court:

E. E. RITCHIE,

District Judge.

Filed in the District Court, Territory of Alaska,
Third Division. Feb. 3, 1923. W. N. Cuddy,
Clerk. [253]

In the District Court for the Territory of Alaska,
Third Division.

No. 836—CRIMINAL.

UNITED STATES OF AMERICA,

vs.

FRANK KELLY,

Defendant.

Order Settling and Certifying Bill of Exceptions.

This cause having come on for hearing on motion of defendant for an order settling and certifying his bill of exceptions to be used upon his writ of error, about to be prosecuted in said cause to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and sentence made and pronounced herein on the 3d day of March, 1922, against the defendant upon a verdict of guilty of the offense of causing girls to be transported in interstate commerce for the purpose of prostitution, and it appearing that said defendant filing herein his proposed bill of exceptions served same upon counsel for the United States, giving due notice of the date and place of the settlement of said bill of exceptions, and no amendments or objections to said bill of exceptions having been made by said United States; and the undersigned Judge of said District Court having

inspected and considered the same and found such bill of exceptions to contain all of the papers, pleadings and proceedings and exceptions necessary to a determination of the questions involved and raised by defendant's exceptions.

It is therefore ORDERED that the foregoing bill of exceptions be, and the same hereby is allowed, approved and settled, and that the same shall be and constitute defendants bill of exceptions upon the prosecution of his writ of error in said cause. [254]

And it is further ordered that this order shall be deemed and is taken as a certificate of the undersigned Judge of this Court that each bill of exceptions consists of all the papers, pleadings, proceedings and exceptions filed, presented, had and done in said cause, and all of the matters upon which said judgment of March 3, 1922, is based, and of all matters and things necessary or proper for the determination of the questions involved herein or raised or attempted to be raised by said writ of error.

I further certify that this cause was tried at the November, 1921, Anchorage term of this court; that before the adjournment of said term at Anchorage; November 9, 1922, pending proceedings on writ of error herein were by order of court continued over to a term of court convening at Anchorage November 10, 1922; that said last-mentioned term is still alive, having been adjourned by order of court made December 30, 1922, to March 5, 1923; and the bill of exceptions herein is

settled and signed this day at the Valdez term of this court because court is now in session at Valdez and not at Anchorage.

Done at Valdez, Alaska, this 9th day of February, 1923.

E. E. RITCHIE,
District Judge.

[Endorsed]: Filed in the District Court for the Territory of Alaska, Third Division. February 9, 1923. W. N. Cuddy, Clerk. [255]

Journal No. A-2.

District Court, Territory of Alaska, Third Division.
Page 279.

November 28, 1921, Term of Court, Anchorage,
Alaska, November 9, 1922—50th Court Day.

In the District Court for the Territory of Alaska,
Third Division.

CRIMINAL—No. —.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK KELLY,

Defendant.

Order Continuing Cause.

Now, on this day, this matter coming before the Court, on motion of Ray & David, attorneys for de-

fendant, to vacate judgment, the Government being represented by the Hon. Sherman Duggan, United States Attorney, the defendant being personally present and represented by counsel,—

IT IS ORDERED that this cause be and the same is continued over until the next term of this court at Anchorage, beginning November 10th, 1922.

To which the defendant excepted and the exception was allowed by the Court. [256]

In the District Court for the Territory of Alaska,
Third Division.

No. 836—CRIMINAL.

UNITED STATES OF AMERICA

vs.

FRANK KELLY.

Assignment of Errors.

Comes now the defendant, Frank Kelly, in the above-entitled action, and makes and files the following assignment of errors, upon which the defendant will rely in the prosecution of his writ of error herein:

First. The Court erred in permitting the witness Mildred Bowles to testify to matters foreign to the issues raised by the indictment, over and against the objection of the defendant and excepted as follows:

Q. Who invited you to go out there to the Lake?

Mr. RAY.—We object to that.

Objection overruled, defendants allowed an exception.

A. It was Mr. Anderson suggested it to those in the box at the Frisco where Mr. and Mrs Kelly, myself, Mr. Anderson, Mr. Evans and Margaret were having supper, after two o'clock,—after the pool-hall was closed, and it was very agreeable to everybody.

Q. Who had the liquor?

A. That I don't know for a positive fact, whether Mr. Anderson or Mr. Evans had it, but it was brought in. They made arrangements and it was brought there to the box.

Mr. RAY.—We move that to be stricken as not responsive to the question.

Motion denied; defendants allowed an exception. [257]

Second. The Court erred in permitting the witness Mildred Hilkert to testify to matters foreign to the issues raised by the indictment, over and against the objection of the defendant and excepted as follows:

Q. What, if anything, further was said by Mrs. Kelly at this time?

Mr. RAY.—We object to the question propounded by the District Attorney to the witness on the ground that it seeks to prejudice the jury and inflame their minds against the defendants and can in no manner tend to prove

whether or not on the third day of August, 1921, the defendant Kelly wired to the witness on the stand with the intent and purpose to induce her to live the life of a prostitute or to live a life of debauchery or to indulge in other criminal practices, as charged in the indictment.

Objection overruled; defendants allowed an exception.

Q. At this time did she say anything further to these girls or say anything further than you have already stated when she called you over acrossed the hall?

A. Not just at that moment.

Q. What, if anything, did she say?

The COURT.—About the same subject.

A. I walked across the pool-hall to the side room; three girls were in the back room, and Mrs. Kelly was standing at the door and I asked her what was the idea, that I wasn't accustomed to associating with these people, and she said, "These girls are all right, they are good fellows, good spenders, come in and meet them," and me and my sister walked in and were introduced to the girls and they bought several drinks and there were two or three men with them. [258]

Mr. RAY.—We move to strike the answer.

Motion denied; defendants except.

Third. The Court erred in permitting the witness Margaret Johnson to testify to matters foreign to the issues raised by the indictment over

and against the objection of the defendant, relative to a trip to Lake Spenard and excepted to as follows:

Mr. RAY.—It is understood that there is an objection on the part of each defendant to this line of testimony now sought to be elicited.

The COURT.—Yes, I understand that all objections are made in behalf of both defendants and it is understood that all the testimony in regard to this particular occurrence, this trip to Lake Spenard, goes in under the objection of both defendants.

Fourth. The Court erred in permitting the witness Margaret Johnson to testify to matters foreign to the issues raised by the indictment, over and against the objection of the defendant and excepted to, as follows:

Q. Did Mr. Kelly ever speak to you about a hunting party? A. Yes, he spoke to me.

Q. Can you fix the time?

A. It was the Thursday or Friday before Labor Day. There were three big days coming up—it was Thursday, Friday before that, before Saturday, Sunday and Monday.

Q. What did he say?

Mr. RAY.—We object to that as incompetent irrelevant and immaterial and not tending to prove any of the issues in the case and has been ruled out by the Court with reference to the witness Mrs. Bowles. [259]

The COURT.—It was admitted to allow the jury to consider it in connection with the intent. The objection will be overruled and exception allowed.

A. He said, “Well, it will soon be over, girls; we have three hard days ahead of us.” He said, “The old lady is going on a hunting trip and when she is gone Mildred and Sid and I and you will have a regular party,” and I said, “What do you mean by a regular party?” and he said, “We will have two or three quarts of good stuff to drink, we will have bonded stuff. We will sell the mule here but we will drink good stuff,” and Mildred said, “Do you mean a bedroom party, Kelly?” and he said, “Sure; you are only human and it won’t hurt you once.”

Fifth. The Court erred in refusing to permit the witness Pierce to testify as to the character of the place conducted by the defendant, Kelly, to which exception was taken as follows:

Q. Did you ever at any time that you were employed there see anything that would indicate the fact that the practice of prostitution was being indulged? A. Nothing at all.

Mr. DUGGAN.—We object to that and move to strike the answer.

Objection sustained and motion granted. Defendants excepted.

Sixth. The Court erred in refusing and denying the motion of the defendant for a directed verdict and made at the close of all the testimony as follows:

By Mr. RAY.—My second motion is as follows: Come now the defendants, Mrs. Grace Kelly and Frank Kelly, and move the Court to instruct the jury to return a verdict of not guilty as to both defendants upon all the counts in the indictment in this case on the ground that the uncontradicted evidence submitted [260] in this case shows that the witnesses Misses Hilkert came to Alaska under a contract of employment with the defendant Frank Kelly, entered into by means of telegraphic and cable communication, and that as a consideration of the contract and one element thereof, the witnesses, the Misses Hilkert, were to repay Frank Kelly, the defendant, the cost of transportation advanced by the said Kelly to the said Misses Hilkert, upon the basis of a deduction of \$5.00 per week from the contracted salary as set forth in such telegraphic communication, and that the advance of such transportation with the contract to repay as shown by the uncontradicted evidence in this case, does not come under the Interstate Commerce Regulations and is not a violation of the so-called White Slave Act.

After argument both motions were by the Court denied and defendants allowed an exception to the rulings. (Jury returns.)

Seventh. The Court erred in permitting the introduction over and against the objection and duly allowed exceptions of the defendant of testimony of various witnesses relative to events and occurrences transpiring after the 4th day of Au-

gust, 1921, the date of furnishing of the transportation plead in the indictment, as exemplified in the excerpts of testimony already herein assigned as error; this general assignment necessary, otherwise a major portion of the testimony given at the trial would have to be repeated *verbatim* herein. [261]

Eighth The Court erred in denying the motion of defendant for a new trial as based upon the misconduct of a juror, and for the other reasons urged in said motion.

Ninth. The Court erred in denying the motion of defendant in arrest of judgment.

Tenth. The Court erred in entering judgment in said cause against the defendant.

Eleventh. The Court erred in refusing to grant the motion of the defendant Frank Kelly for a directed verdict of "Not Guilty" at the close of all the testimony, upon the ground urged as to insufficiency of the proof offered and given to warrant submission of the cause to the jury.

Twelfth. The Court erred in denying the motion of defendant to vacate the judgment and sentence as void upon a verdict of an illegally constituted jury. [262]

Thirteenth. The Court erred in giving the following instruction to the jury, the same being that portion of instruction number 5 on the question of reasonable doubt reading as follows:

"A reasonable doubt is such a doubt as may fairly and naturally arise in your minds after fully and fairly considering all the evidence in the case. It is that state of the case which

leaves the minds of the jurors, after comparison and consideration of all the evidence, in such condition that they cannot say they feel an abiding conviction to a moral certainty of the guilt of the defendant. A moral certainty is not an absolute certainty, but such a certainty as excludes every reasonable hypothesis creating a doubt."

To the giving of which the defendant duly excepted in the presence of the jury and before they retired, which exception was by the Court allowed.

Fourteenth. The Court erred in giving that portion of the instruction of the Court numbered eight, said portion reading as follows:

"You are instructed and cautioned that you are not to allow your minds to be influenced in the slightest degree by any of this evidence except for its bearing on the question of intent, at the time of securing the tickets, if you find it has any such bearing."

The whole instruction reads as follows:

"If you find from the evidence that the defendants, or either of them, furnished or aided in furnishing the transportation that brought the girls from Seattle to Anchorage, and caused it to be delivered to the girls for that purpose, the only remaining question for you to determine is the purpose or intent either defendant had in mind at the time of securing or aiding to secure said transportation; that is, did either defendant in so securing or aiding to secure said transportation, if you find that either [263] defendant, or both,

did secure or help to secure the same, have in mind the intent to bring said girls or either of them to Alaska with the purpose to induce, entice or persuade said girls, or either of them, to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice. If you find beyond all reasonable doubt that said defendants, or either of them, did bring or aid in bringing said girls to Alaska from Seattle for any of the unlawful purposes named, then you will find such defendant or defendants guilty upon the count or counts which you so find to be proved beyond all reasonable doubt.

But unless you do so find beyond all reasonable doubt that the defendants, or either of them, had such intent at the time said transportation was furnished, you cannot return a verdict of guilty against them, or against the one, if either, who lacked such intent at the time of furnishing said transportation.

If you find from the evidence that the defendants, or either of them, formed the intent and purpose after the girls arrived in Anchorage to persuade them to enter upon any of the unlawful and immoral practices set forth in the indictment, such finding will not authorize a conviction in this case, because the defendants are not charged in the indictment with any unlawful act done or purpose arising after the girls arrived in Anchorage.

All the testimony admitted in the case other than that designed to show that defendants

secured or aided in securing the steamship tickets which were the means of transporting the girls to Anchorage from Seattle was admitted for the sole purpose of showing the intent on the part of the defendant, or either of them, in furnishing said transportation, and it is not to be considered by you for any other purpose. You are instructed and cautioned that you are not to allow your minds to be influenced in the slightest degree by any of this evidence except for its bearing on the question of intent, at the time [264] of securing the tickets, if you find it has any such bearing.

If you find that any of the evidence admitted by the Court may tend to show that other offenses may have been committed by defendant, or either of them, in or about the Kelly pool-hall or building while the girls were there, such evidence is to be disregarded by you unless you find that it has some bearing upon the question of the intent of defendants in securing said transportation to bring the girls from Seattle to Anchorage, and then it is to be considered only so far as you may find it may affect the question of such intent."

To which portion of said instruction the defendant duly excepted in the presence of the jury and before they retired, which exception was by the Court allowed.

Fifteenth. The Court erred in giving instruction numbered 11 reading as follows:

“You are instructed that the evidence is to be estimated not only by its own intrinsic weight, but also according to the testimony which it is within the power of one side to produce and of the other side to contradict, and therefore, if the weaker and less satisfying evidence is produced when it appears that it was within the power of the party offering the same to produce stronger and more satisfying evidence, such evidence, if so offered, should be viewed with distrust.”

To the giving of which the defendant duly excepted in the presence of the jury and before they retired, upon the ground that it is not incumbent upon the defendants, or either of them, to prove their innocence or produce any testimony, which exception was by the Court allowed.

Sixteenth. The Court erred in refusing to give to the jury defendant's requested instruction No. 16 as follows:

“You are instructed to return a verdict of not guilty on all the counts in the indictment contained as to the defendant, Frank Kelly.”

[265]

To the refusal of which the defendant duly excepted in the presence of the jury and before they retired, which exception was by the Court allowed.

Seventeenth. The Court erred in modifying defendant's requested instruction No. 13 by striking therefrom the first five lines. The requested instruction reading as follows:

“You are further instructed that the mere aiding of a person, such as the procuring of a

railroad ticket or the lending of money to travel with which to purchase a ticket, does not come under the interstate commerce regulations and is not a violation of the so-called White Slave Act and if you find in this case that the defendants as a part of their contract of employment simply advanced fare to the Hilkert girls in order to enable them to travel from Seattle, Washington, to Anchorage, Alaska, and there to enter upon their contract of employment as entertainers, then your verdict will be not guilty as to both defendants as to each and every count in the indictment; unless, however, you are satisfied beyond all reasonable doubt that at the time said transportation was provided, if it was so provided, by the defendants to the Hilkert girls, the defendant, Frank Kelly, and the defendant Mrs. Grace Kelly, furnished such transportation with the intent then and there to induce and entice the said Mildred Hilkert and Margaret Hilkert to become prostitutes and to give themselves up to debauchery and to engage in other immoral practices.”

To the refusal of the Court to give said requested instruction in full the defendant duly excepted in the presence of the jury and before they retired, which exception was by the Court allowed. [266]

Eighteenth. The Court erred in refusing to give to the jury defendants' requested instruction No. 22 as follows:

You are instructed, that contracts of employment, and other contracts, may be entered

into by and through the means of telegraphic correspondence; that is to say, an offer of employment, made by telegraphic or cable communication, may be accepted by such means or mode of communication; and, if you find, from a consideration of all the testimony submitted, that the Misses Hilkert came to Alaska in consequence of and in accordance with the telegraphic offer of the defendant Frank Kelly, and by the acceptance of such offer as embodied in said telegraphic or cable communication bound themselves to repay to the defendant Frank Kelly the cost of the transportation on the basis of a weekly deduction from the salary contracted to be paid, then, and in that event you must find the defendant Frank Kelly, "not guilty," as to all the counts in the indictment contained, for the reason that lending money with which to enable another to travel or to purchase transportation, does not come under interstate commerce regulations and is not a violation of the so-called White Slave Act.

To the refusal of which the defendant duly excepted in the presence of the jury and before they retired, which exception was by the Court allowed.
[267]

Nineteenth. The Court erred in refusing to give to the jury defendants' requested instruction No. 23, as follows:

You are instructed that if the Government adduced testimony as to isolated incidents that tended to show the atmosphere of the place

where the girls worked, the same should not be considered by the jury unless the incidents tended to establish the gist of the charges in the indictment, that is, tended to show that the defendants intended on August 3, 1921, to bring the girls to Anchorage for purposes of prostitution and debauchery; and if the incidents related by the Government witnesses did not so show, the defendants were not required to answer them.

To the refusal of which the defendant duly excepted in the presence of the jury and before they retired, which exception was by the Court allowed.

[268]

WHEREFORE, the defendant, Frank Kelly, as plaintiff in error, prays that the judgment and sentence of the District Court for the Territory of Alaska, Third Division, made and pronounced on the 3d day of March, 1922, may be reversed, set aside and vacated.

MURPHY & COFFEY,
RAY & DAVID,
AARON E. RUCKER,

Attorneys for Plaintiff in Error.

Service of the foregoing assignment of errors, by receipt of copy thereof, admitted this 23d day of January, 1923.

SHERMAN DUGGAN,
United States Attorney.

[Endorsed]: Filed in the District Court, Territory of Alaska. Jan. 23, 1923. W. N. Cuddy, Clerk.

[269]

In the District Court for the Territory of Alaska,
Third Division.

No. 836—CRIMINAL.

UNITED STATES OF AMERICA

vs.

FRANK KELLY,

Defendant.

Petition for Writ of Error.

Comes now the above-named defendant, Frank Kelly, and says: That on the third day of March, 1922, this Court entered judgment against the defendant upon a verdict of guilty of the offense of causing girls to be transported in interstate commerce for the purpose of prostitution, directing the imprisonment of the said defendant for the period of nine months in the Federal Jail at Anchorage, Alaska, on each of the eight counts of the indictment in said cause, said sentences on all the eight counts to run concurrently:

That in said judgment, and in the proceedings had prior thereto, certain errors were committed to the prejudice of the defendant, all of which more fully appear in the assignment of errors, which is filed with this petition.

WHEREFORE the defendant prays that a writ of error may issue in his behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the errors so complained of, and that the transcript of the record, testimony, proceedings,

and papers in this cause, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had in the premises as may be proper therein.

AARON E. RUCKER,
Attorney for Defendant.

Service of the above petition for writ of error admitted this 23d day of January, 1923, by receipt of copy thereof.

SHERMAN DUGGAN,
United States Attorney.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. W. N. Cuddy, Clerk. [270]

In the District Court for the Territory of Alaska,
Third Division.

No. 836—CRIMINAL.

UNITED STATES OF AMERICA

vs.

FRANK KELLY,

Defendant.

Order Allowing Writ of Error.

On this 23d day of January, A. D. 1923, came the defendant herein, by his attorneys, and filed and presented to the Court his petition praying for the allowance of a writ of error and the assignment of errors intended to be urged by him; pray-

ing, also, that a transcript of the record, testimony, proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had as may be proper in the premises;

And, it appearing to the Court, the said defendant has heretofore filed herein a duly approved appearance or bail bond, and also a duly approved cost bond.

NOW, THEREFORE, in consideration of the premises, and the Court being fully advised,—

IT IS ORDERED that the aforesaid writ of error be, and the same is hereby allowed.

IT IS FURTHER ORDERED the duly approved appearance or bail bond heretofore filed in this cause by the defendant shall operate as a supersedeas, or stay of sentence.

And IT IS FURTHER ORDERED that a transcript of the record, testimony, files and proceedings in this cause, save as modified by the order of this Court relative to certain of the original [271] exhibits introduced in evidence in said cause, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

E. E. RITCHIE,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Jan. 23, 1923.
W. N. Cuddy.

Entered Court Journal No. 13, page No. 693.
[272]

In the District Court for the Territory of Alaska,
Third Division.

No. —.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK KELLY,

Defendant.

Undertaking on Appeal.

A judgment having been given on the — day of March, 1922, whereby the above-named defendant Frank Kelly, after having been found guilty by a jury of the crime of violating Chapter 14, of the Criminal Code, Compiled Laws of Alaska, known as the "White Slave Traffic Act" was sentenced to serve a term of Nine Months in the Federal Jail at Anchorage, Alaska, and having appealed from said judgment or sentence to the United States Circuit Court of Appeals for the Ninth Circuit of the United States and having been duly admitted to bail in the sum of Two Thousand Dollars (\$2,000.00).

We, J. E. Robarts of Anchorage, Alaska, by occupation a merchant, and John M. Collins of the same place, by occupation a merchant and miner, and L. N. Lowell of the same place, by occupation an A. E. C. employee and property holder, and

R. E. Lewis, of the same place, by occupation a contractor and property holder, hereby undertake that the above-named defendant, Frank Kelly, shall in all respects abide and perform the orders and judgments of the said Circuit Court of Appeals, upon appeal; or, if he fail to do so in any particular, that we will pay to the United States of America the sum of Two Thousand Dollars (\$2,000.00).

IN WITNESS WHEREOF, we have hereunto set our names at Anchorage, Alaska, this 7th day of March, 1922.

FRANK KELLY,
Principal.

J. E. ROBARTS.

JOHN M. COLLINS.

L. N. LOWELL.

R. E. LEWIS.

Filed in the District Court, Territory of Alaska, Third Division. March 7, 1922. W. N. Cuddy, Clerk. By J. Hamburger, Deputy. [273]

United States of America,
Territory of Alaska,—ss.

J. E. Robarts, John M. Collins, L. N. Lowell and R. E. Lewis, the sureties named in the within undertaking being severally sworn, each for self and not one for the other, depose and say that they signed the foregoing undertaking; that they are residents and property holders in the City of Anchorage, Third Judicial Division, Territory of Alaska; that they, or neither of them, or attorneys

or counselors at law, U. S. Commissioner, U. S. Marshal, Deputy U. S. Marshal, Clerk of the District Court or other officer of any court, and that each are worth the sum of One Thousand Dollars, over and above all just debts and liabilities and property exempt from execution.

J. E. ROBARTS.

JOHN M. COLLINS.

L. N. LOWELL.

R. E. LEWIS.

Subscribed and sworn to before me this 7th day of March, 1922.

J. C. MURPHY,

Notary Public for Alaska.

My commission expires June 10, 1922.

Approved this 7th day of March, 1922.

E. E. RITCHIE,

District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Mar. 7, 1922. W. N. Cuddy, Clerk. By J. Hamburger, Deputy.
[274]

In the District Court for the Territory of Alaska,
Third Division.

No. —.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK KELLY,

Defendant.

Undertaking for Costs on Appeal.

A judgment having been given on the — day of March, 1922, whereby the above-named defendant Frank Kelly, after having been found guilty by a jury of violating Chapter 14 of the Criminal Code, Compiled Laws of Alaska, known as the "White Slave Traffic Act" and sentenced to serve a nine months' term in the Federal Jail at Anchorage, Alaska, and having appealed from such sentence and judgment to the U. S. Circuit Court of Appeals for the Ninth District, we, J. E. Robarts, of Anchorage, Alaska, by occupation a merchant, and John M. Collins, of the same place, by occupation a merchant and miner, and L. N. Lowell, of the same place, by occupation a A. E. C. employee and an Anchorage property holder, and R. E. Lewis, of the same place by occupation a contractor and Anchorage property holder, hereby undertake that the above-named defendant Frank Kelly shall pay all costs that may be awarded against him on appeal not exceeding the sum of Two Hundred and Fifty Dollars (\$250.00).

IN WITNESS WHEREOF, we have hereunto set our hands at Anchorage, Alaska, this 7th day of March, 1922.

FRANK KELLY,

Principal.

J. E. ROBARTS, Surety.

JOHN M. COLLINS, Surety.

L. N. LOWELL, Surety.

R. E. LEWIS, Surety. [275]

United States of America,
Territory of Alaska,—ss.

J. E. Robarts, John M. Collins, L. N. Lowell and R. E. Lewis, being first duly sworn, upon their oaths, each for self and not one for the other, depose and say that they are the identical parties who signed the foregoing undertaking; that they are not attorneys or counselors at law, U. S. Commissioner, U. S. Marshal, Deputy U. S. Marshal, Clerk of Court or other officer of any court and that they are worth the sum specified in the foregoing undertaking as the penalty thereof over and above their just debts and liabilities and property exempt from execution.

L. N. LOWELL,	Surety.
J. E. ROBARTS,	Surety.
JOHN M. COLLINS,	Surety.
R. E. LEWIS,	Surety.

Subscribed and sworn to before me this 7th day of March, 1922.

J. C. MURPHY,
Notary Public for Alaska.

My commission expires June 10, 1922.

Approved this 7th day of March, 1922.

E. E. RITCHIE,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska. Mar. 7, 1922. W. N. Cuddy, Clerk. By J. Hamburger, Deputy. [276]

In the District Court for the Territory of **Alaska**,
Third Division.

No. 836—CRIMINAL.

UNITED STATES OF AMERICA,
Plaintiff and Defendant in Error,
vs.

FRANK KELLY,
Defendant and Plaintiff in Error.

Writ of Error.

The United States of America,
Ninth Judicial Circuit,—ss.

The President of the United States, to the Honorable E. E. RITCHIE, Judge of the District Court for the Territory of Alaska, Third Division, GREETING:

Because in the records and proceedings, as also in the rendition of the judgment, of a plea which is in said District Court before you, between the United States of America, plaintiff, and Frank Kelly, defendant, manifest error hath happened to the great damage of the said defendant, Frank Kelly, as is stated in his petition herein, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit

Court of Appeals for the Ninth Circuit, within thirty days from the date of this writ, so that you have the same in said court at San Francisco, in the State of California, in said Circuit, to be then and there held; that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, [277] should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, this 23d day of January, in the year of our Lord one thousand nine hundred and twenty-three, and in the 147th year of the Independence of the United States of America.

Allowed by:

E. E. RITCHIE,

Judge of the District Court for the Territory of Alaska, Third Division.

[Seal]

Attest: W. N. CUDDY,

Clerk of the District Court for the Territory of Alaska, Third Division.

Filed in the District Court, Territory of Alaska, Third Division. Jan. 23, 1923. W. N. Cuddy, Clerk. By _____, Deputy.

Entered Court Journal No. 13, page No. 694.

[278]

In the District Court for the Territory of Alaska,
Third Division.

No. 836—CRIMINAL.

UNITED STATES OF AMERICA,
Plaintiff and Defendant in Error,

vs.

FRANK KELLY,
Defendant and Plaintiff in Error.

Citation on Writ of Error (Original).

United States of America,
Territory of Alaska,—ss.

The United States of America to the Attorney
General of the United States, and to Honor-
able SHERMAN DUGGAN, United States
Attorney for the Territory of Alaska, Third
Division, GREETING:

YOU ARE HEREBY CITED AND ADMON-
ISHED to be and appear at the United States
Circuit Court of Appeals for the Ninth Circuit,
to be held in the City of San Francisco, in the
State of California, within thirty days from the
date of this writing, pursuant to a writ of error
filed in the clerk's office of the District Court for
the Territory of Alaska, Third Division, wherein
Frank Kelly is plaintiff in error and the United
States of America is defendant in error, and show
cause, if any there be, why the judgment in said
writ of error should not be corrected and speedy
justice should not be done to the parties in that
behalf.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, this 3d day of February, in the year of our Lord one thousand nine hundred and twenty-three, and in the 147th year of the Independence of the United States of America.

[Seal]

E. E. RITCHIE,
District Judge, Territory of Alaska.

Filed in the District Court, Territory of Alaska, Third Division. Feb. 3, 1923. W. N. Cuddy, Clerk. By _____, Deputy. [279]

United States of America,
Territory of Alaska,
Third Division,—ss.

I, the undersigned Clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the attached is a full, true and correct copy of the original citation on writ of error in the case of United States of America, Plaintiff and Defendant in Error, vs. Frank Kelly, Defendant and Plaintiff in Error, No. 836—Criminal, as the same appears on file and of record in my office.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed the seal of the said court at Valdez, Alaska, this 3d day of February, 1923.

[Seal]

W. N. CUDDY,
Clerk.

By S. N. Scott,
Deputy.

Filed in the District Court, Territory of Alaska,
Third Division. Feb. 3, 1923. W. N. Cuddy, Clerk.
By _____, Deputy.

In the District Court for the Territory of Alaska,
Third Division.

No. 836—CRIMINAL.

UNITED STATES OF AMERICA,
Plaintiff and Defendant in Error,
vs.

FRANK KELLY,
Defendant and Plaintiff in Error.

Citation on Writ of Error (Copy).

United States of America,
Territory of Alaska,—ss.

The United States of America to the Attorney
General of the United States, and to Honorable
SHERMAN DUGGAN, United States District
Attorney for the Territory of Alaska, Third
Division, GREETING:

YOU ARE HEREBY CITED AND ADMON-
ISHED to be and appear at the United States Cir-
cuit Court of Appeals for the Ninth Circuit, to be
held in the City of San Francisco, in the State of
California, within thirty days from the date of this
writing, pursuant to a writ of error filed in the
clerk's office of the District Court for the Terri-
tory of Alaska, Third Division, wherein Frank
Kelly is plaintiff in error, and the United States of
America is defendant in error, and show cause, if

any there be, why the judgment in said writ of error should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, this 3d day of February, in the year of our Lord one thousand nine hundred and twenty-three, and in the 147th year of the Independence of The United States of America.

[Seal]

E. E. RITCHIE,

District Judge, Territory of Alaska.

Service acknowledged this 3d day of February, 1923, by receipt of a certified copy of citation.

HARRY G. McCAIN,
Asst. U. S. Attorney. [280]

In the District Court for the Territory of Alaska,
Third Division.

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
Territory of Alaska,
Third Division,—ss.

I, W. N. Cuddy, Clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the above and foregoing, and hereto annexed 280 pages, numbered from 1 to 280, inclusive, are a full, true and correct transcript of records and files of the proceedings in the above-entitled cause, as the same appears on the records and files in my office; that this transcript is made

in accordance with the defendant's praecipe on file herein. I further certify that the foregoing transcript has been prepared, examined and certified to by me on behalf of the defendant, plaintiff in error, the United States of America.

That I hereby certify that the foregoing transcript has been prepared, examined and certified to by me, and that the costs thereof, amounting to \$17.30, has been paid to me by Aaron E. Rucker, Esq., one of the attorneys for the defendants and appellants.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court this 10th day of February, A. D. 1923.

[Seal]

W. N. CUDDY,
Clerk. [281]

[Endorsed]: No. 3986. United States Circuit Court of Appeals for the Ninth Circuit. Frank Kelly, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Territory of Alaska, Third Division.

Filed February 19, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.